

Exhibit 1

From: Marcela Escobar-Eck
To: david.hasemyer@uniontrib.com
CC: Biagi, George; Waring, Jim
BC: Temple, Jeannette
Date: 1/29/2007 10:36:36 AM
Subject: Sunroad timeline

Dave:

Attached is a time line that shows the history of the overall project as well as specifically the Sunroad 12 building. We have made copies for you of the main documents that we reference within the time line. There are over 10 boxes on this project and I am happy to go over any other document that you might want to review on this project. Just let me know if there is anything else that you need after you look through this information.

You know how to find me.
--Marcela

Marcela Escobar-Eck
Director
Development Services Department
Office of the Mayor
City of San Diego

mescobareck@sandiego.gov
619-446-5039

1222 First Avenue, MS 501
San Diego, CA 92101

Attachments: SUNROAD CENTRUM-12 TIMELINE_final_072607.pdf

Exhibit 2

THE CITY OF SAN DIEGO, CALIFORNIA
MINUTES FOR REGULAR COUNCIL MEETING
OF
TUESDAY, DECEMBER 2, 1997
AT 9:00 A.M.
IN THE COUNCIL CHAMBERS - 12TH FLOOR

CHRONOLOGY OF THE MEETING:

The meeting was called to order by Mayor Golding at 10:06 a.m.

Frank Belock, Director of Engineering and Capital Projects, gave a presentation regarding the City's preparations for the upcoming winter relating to the climatic condition El Nino may bring to the region. Mr. Belock informed Council of the work going on in the field, infrastructure, and flood-way improvements. Chris Bach, Coordinator of the Emergency Operation's Center also gave information as to the City's preparedness for emergency situations. He said the five areas of focus that City Disaster Preparedness has been working on are training for first responders, community outreach, public information, command in control, and outside resources.

Mayor Golding recessed the meeting at 11:12 a.m. to convene the Redevelopment Agency. The meeting was reconvened by Mayor Golding at 11:15 a.m. with Council Member Mathis not present. The meeting was recessed by Mayor Golding at 12:08 p.m. to reconvene at 2:00 p.m.

The meeting was reconvened by Mayor Golding at 2:09 p.m. with Council Members Mathis, Kehoe and Vargas not present. Mayor Golding recessed the meeting at 4:05 p.m. to reconvene the Redevelopment Agency. The Council Meeting was reconvened by Mayor Golding at 4:07 p.m. with Council Member Mathis not present. Deputy Mayor Warden recessed the meeting at 4:42 p.m. to reconvene the Redevelopment Agency. The Council Meeting was reconvened by Deputy Mayor Warden at 4:45 p.m. with Mayor Golding and Council Members Mathis and Wear not present. Deputy Mayor Warden adjourned the meeting at 4:47 p.m.

ATTENDANCE DURING THE MEETING:

(M) Mayor Golding-present

(1) Council Member Mathis-excused by R-289588
(Death of father)

ADOPT THE ORDINANCE. Second by Wear. Passed by the following vote: Mathis-not present, Wear-yea, Kehoe-yea, Stevens-yea, Warden-yea, Stallings-yea, McCarty-yea, Vargas-yea, Mayor Golding-yea.

* ITEM-54:

SUBJECT: Matter of the New Century Center Development Plan - Proposed Redevelopment of the Kearny Mesa General Dynamics Site in the Kearny Mesa Community Plan Area. (Kearny Mesa Community Area. District-6.)

CITY COUNCIL'S RECOMMENDATION:

Adopt the following ordinances which were introduced on 11/18/97. (Council voted 9-0):

Subitem-A: (O-98-39) ADOPTED AS ORDINANCE O-18447 (New Series)

Incorporating the Kearny Mesa General Dynamics property into the CA, M-1A and OS-TDR Zones.

Subitem-B: (O-98-40) ADOPTED AS ORDINANCE O-18448 (New Series)

Approving the Development Agreement between the City of San Diego and General Dynamics Properties, Inc.

FILE LOCATION: Subitems A,B: LAND-Kearny Mesa
Community Plan Area CONT FY98-1

COUNCIL ACTION: (Tape location: B187-319.)

CONSENT MOTION BY WARDEN TO DISPENSE WITH THE READING AND ADOPT THE ORDINANCES. Second by Wear. Passed by the following vote: Mathis-not present, Wear-yea, Kehoe-yea, Stevens-yea, Warden-yea, Stallings-yea, McCarty-yea, Vargas-yea, Mayor Golding-yea.

* ITEM-100:

SUBJECT: Inviting Bids for the Sidewalk and Curb/Gutter Replacement City Wide "C-15".

CITY MANAGER'S RECOMMENDATION:

(O-98-39)

ORDINANCE NUMBER O-18447 (NEW SERIES)

ADOPTED ON DECEMBER 2, 1997

AN ORDINANCE INCORPORATING THE KEARNY MESA
GENERAL DYNAMICS PROPERTY LOCATED IN THE CITY
OF SAN DIEGO, CALIFORNIA, INTO THE CA, M-1A AND
OS-TDR ZONES, AS DEFINED BY SAN DIEGO MUNICIPAL
CODE SECTIONS 101.0428, 101.0436, AND 101.0405
RESPECTIVELY.

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1. That the Kearny Mesa General Dynamics property located in The City of San Diego, California, within the boundary of the district designated M-IB on Zone Map Drawing No. B-4056, a copy of which is attached hereto, filed in the office of the City Clerk as Document No. OO-18447, be and is hereby incorporated into the CA, M-1A and OS-TDR Zones, as provided on Zone Map Drawing No. B-4056, as such zones are described and defined by San Diego Municipal Code Sections 101.0428, 101.0436, and 101.0405 respectively.

Section 2. That all other prior ordinances of The City of San Diego be and they are hereby repealed insofar as the same conflict herewith.

Section 3. This ordinance shall take effect and be in force on the thirtieth (30th) day from and after its passage, and no building permits for development inconsistent with the provisions of this ordinance shall be issued unless application therefor was made prior to the date of adoption

of this ordinance.

APPROVED: CASEY GWINN, City Attorney

By _____
Prescilla Dugard
Deputy City Attorney

PD:cdk
11/03/97
Or.Dept.Dev.Svcs.
Case No.96-0165
O-98-39
Form=rezxo.frm

ORDINANCE NUMBER O-18448 (NEW SERIES)

ADOPTED ON DECEMBER 2, 1997

AN ORDINANCE APPROVING THE DEVELOPMENT
AGREEMENT BETWEEN THE CITY OF SAN DIEGO AND
GENERAL DYNAMICS PROPERTIES, INC.

WHEREAS, General Dynamics Properties, Inc. ("Owner") is the owner or equitable owner of that certain real property consisting of approximately 232 acres located within the Kearny Mesa community planning area; and

WHEREAS, The City of San Diego, a charter city, is authorized pursuant to Government Code Sections 65864 - 65869.5 to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property in order to establish certainty in the development process. The City further enters into this Development Agreement pursuant to its Charter and self-rule powers and San Diego Municipal Code Sections 111.0901 *et seq.*; and

WHEREAS, the parties desire to enter into this Development Agreement relating to the above-described real property in conformance with the provisions of the Government Code in order to achieve the development of private land uses together with the provision of public services, public uses, and urban infrastructure all in the promotion of the health, safety, and general welfare of the City of San Diego; and

WHEREAS, the property is located within the boundaries of the Kearny Mesa community planning area. This community plan was amended by the Council on November 18, 1997, by Resolution No. R-289452. In conjunction with the amendment of the community plan, the

Council certified the information contained in the Environmental Impact Report and approved the findings of the environmental document in compliance with the California Environmental Quality Act of 1970; and

WHEREAS, development of the subject property will be in conformance with the Kearny Mesa Community Plan, the CA, M1-A, and OS-TDR Zones, and the New Century Center Project Master Plan and approvals (LDR No. 96-0165) including a Planned Commercial Development Permit, Planned Industrial Development Permit, Vesting Tentative Map, Resource Protection Permit, and the New Century Center Development Standards and Design Manual. The environmental effects of development permitted pursuant to the agreement were addressed in Environmental Impact Report No. 96-0165 which has been certified by the City; and

WHEREAS, because of the complexities of financing the urban infrastructure, certainty in the development process is desirable. The phasing, timing and development of the public infrastructure including, but not limited to, parks, libraries, fire stations, transportation facilities, sewer and water facilities, other utilities, and open space maintenance necessitates a significant commitment of resources, planning and effort by property owners and the City in order for the public facilities financing to be successfully completed. Accordingly, in return for the participation and commitment to provide a pro rata share of public facilities and the significant contribution of private resources for public purposes, the City in return desires to make a commitment for certainty in the development process; and

WHEREAS, pursuant to the terms of the Development Agreement, Owner will provide substantial public improvements and benefits to the City including participation in the Kearny Mesa Public Facilities Financing Plan. In consideration of the public improvements and benefits to be provided by Owner pursuant to the Development Agreement, in consideration of Owner's

agreement to finance public facilities, and in order to strengthen the public planning process and reduce the economic costs of development, by the Development Agreement the City intends to give Owner assurance that Owner can proceed with the development of the subject property for the term of the Development Agreement pursuant to the Development Agreement; and

WHEREAS, on October 23, 1997, the Planning Commission of The City of San Diego, after giving notice pursuant to Government Code Sections 65854, 65854.5, 65856, and Section 105.0103 of the San Diego Municipal Code held a public hearing on the application for the Development Agreement and recommended approval of same; and

WHEREAS, the Council of The City of San Diego, after providing public notice as required by law, held a public hearing on Owner's application, wherein all persons desiring to be heard were heard, and pursuant to said public hearing the Council recommended approval of the Development Agreement; and

WHEREAS, the Council finds that the Development Agreement is consistent with the Progress Guide and General Plan and the Kearny Mesa Community Plan, as well as all other applicable policies and regulations of The City of San Diego; and

WHEREAS, the Council has reviewed and considered the Development Agreement and determined the content of the Development Agreement to be complete and correct; NOW, THEREFORE,

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1. The Council finds and determines the facts stated above to be true.

Section 2. The Council further finds with respect to the Development Agreement that:

A. It is consistent with the objectives, policies, programs and uses specified in the Progress Guide and General Plan and the Kearny Mesa Community

Plan.

B. It will not be detrimental to the public health, safety and general welfare.

C. It will promote the orderly development of property or the preservation of property values in accordance with good land use practice.

Section 3. The Council hereby approves the General Dynamics Properties, Inc. Development Agreement, a copy of which is on file in the office of the City Clerk as Document No. OO-18448, and authorizes and directs the City Manager to execute said Development Agreement in the name of The City of San Diego not later than 15 days following the effective date of this ordinance. Failure of Owner to execute the Development Agreement within 30 days, shall render this action null and void. The City Clerk is directed to record said Development Agreement and this ordinance with the County Recorder of San Diego County within ten days after its execution.

Section 4. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: CASEY GWINN, City Attorney

By _____

Prescilla Dugard
Deputy City Attorney

PD:cdk
11/05/97
Or.Dept:Dev.Svcs.
O-98-40
Form=devagro.frm

Exhibit 3

THE CITY OF SAN DIEGO, CALIFORNIA
MINUTES FOR REGULAR COUNCIL MEETING
OF
TUESDAY, OCTOBER 3, 2000
AT 9:00 A.M.
IN THE COUNCIL CHAMBERS - 12TH FLOOR

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Linwood Street proposed for vacation totals .149 acres and is located in the Uptown Community Planning Area. In 1997, the Uptown Planners recommended against the vacation by a vote of 10-0, with no conditions. They believed it did not meet the requirements of the Community Plan. Staff believes that the proposed vacation does meet the requirements of the Uptown Community Plan. On December 2, 1999, the Planning Commission voted 5-0 in favor of the vacation, recommending that a building restriction easement be included over the area proposed for vacation. Staff believes the building restriction easement is redundant because the vacated area will be significantly encumbered by general utility easements described below.

The applicant is requesting the vacation without a building restriction easement, in order to facilitate the construction of his proposed driveway. The area of Linwood Street proposed for vacation contains public sewer and SDG&E facilities, for which general utilities easements will be reserved as a condition of the vacation. Staff recommends that the right-of-way be vacated conditioned upon the reservation of general utilities easements, the installation of a curb cut to provide access, and a cut-and-plug of the water main in Keating Street.

FINDINGS: Staff review has indicated that the right-of-way may be vacated because the four required findings for vacation can be made.

FISCAL IMPACT:

None. All costs have been paid for by the applicant.
Culbreth-Graft/Haase/GH

FILE LOCATION: STRT-J-2916 (39)

COUNCIL ACTION: (Tape location: A301-376.)

Hearing began at 11:30 a.m. and halted at 11:35 p.m.

MOTION BY WEAR TO ADOPT. Second by Kehoe. Passed by the following vote: Mathis-yea, Wear-yea, Kehoe-yea, Stevens-yea, Blair-yea, Stallings-yea, McCarty-yea, Vargas-yea, Mayor Golding-yea.

ITEM-331: San Diego Spectrum.

Matter of approving, conditionally approving, modifying

or denying the proposed 1) Lennar Project (99-1269) -
VTM/Master Plan Amendment to revise the lot and

street configuration on Phase 3 & 4 of TM-96-0165; revise the New Century Center Master Plan to reflect the new design of Market Square/Planning Area 2A; and vacate Irrevocable Offer to Dedicate for the old Market Square configuration: 2) FF Development (99-0509) - A Planned Residential Development permit, a Rezone for CA to R-1500, a Tentative Parcel Map, an Amendment to the Kearny Mesa Community Plan, the New Century Master Plan and the New Century Center Development Agreement to allow 448 multi-family residential units. The property is bounded by Clairemont Mesa Boulevard to the north, SR 163 and Kearny Villa Road to the west, Ruffin Road to the east, and Balboa Avenue to the south. TM-96-0165 (San Diego Spectrum)

(99-1269 & 99-0509. Kearny Mesa Community Plan Area. District-6.)

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolutions in subitems A, B, and J; adopt the resolution in subitem E to grant the map; adopt the resolution in subitem F to grant the map; adopt the resolution in subitem G to grant the amendment to the permit; adopt the resolution in subitem H to grant the permit; and introduce the ordinances in subitems C, D, and I:

Subitem-A: (R-2001-437) ADOPTED AS RESOLUTION R-293925

Adoption of a Resolution certifying that the information contained in Addendum to an Environmental Impact Report (EIR) LDR-99-1269, dated July 6, 2000, Addendum to EIR-96-0165, has been completed in compliance with the California Environmental Quality Act of 1970 and State CEQA guidelines, and that said Addendum to EIR-96-0165 reflects the independent judgment of the City of San Diego as Lead Agency; Stating for the record that the Addendum to EIR-96-0165 has been reviewed and considered by the Council prior to approving the project.

Subitem-B: (R-2001-438) ADOPTED AS RESOLUTION R-293926

Adoption of a Resolution approving the requested amendments to the Kearny Mesa Community Plan and the Progress Guide and General Plan related to the New Century Center Master Plan.

Subitem-C: (O-2001-50) INTRODUCED, TO BE ADOPTED ON
OCTOBER 16, 2000

Introduction of an Ordinance changing 10.40 acres and 9.20 acres, located in the Kearny Mesa Community Plan Area, in the City of San Diego, California, from the CA and M-1B zones, respectively, to the R-1500 zone, as defined by San Diego Municipal Code Section 101.0410; and repealing Ordinances No. O-12342 (New Series), adopted May 1, 1978, and No. O-18447 (New Series), adopted December 2, 1997, of the Ordinances of the City of San Diego insofar as the same conflict herewith.

Subitem-D: (O-2001-51) INTRODUCED, TO BE ADOPTED ON
OCTOBER 16, 2000

Introduction of an Ordinance changing 11.90 acres, located in the Kearny Mesa Community Plan Area, in the City of San Diego, California, from the CA zone to the M-1B zone, as defined by San Diego Municipal Code Section 101.0435.2; and repealing Ordinance No. O-18447 (New Series), adopted December 2, 1997, of the Ordinances of the City of San Diego insofar as the same conflict herewith.

Subitem-E: (R-2001-) GRANTED MAP, ADOPTED AS
RESOLUTION R-293927

Adoption of a Resolution granting or denying Vesting Tentative Map (VTM) 99-1269.

Subitem-F: (R-2001-) GRANTED MAP, ADOPTED AS
RESOLUTION R-293928

Adoption of a Resolution granting or denying Tentative Parcel Map (TPM) 99-0509.

Subitem-G: (R-2001-) GRANTED PERMIT, ADOPTED AS
RESOLUTION R-293929

Adoption of a Resolution granting or denying the Planned Industrial Development/Planned Commercial Development (PID/PCD) Permit Amendment No.-99-1269 that amends PID/PCD Permit No. 96-0165.

Subitem-H: (R-2001-) GRANTED PERMIT, ADOPTED AS
RESOLUTION R-293930

Adoption of a Resolution granting or denying Planned
Residential Development Permit No.-99-0509 for 448
multi-family residential units.

Subitem-I: (O-2001-54). INTRODUCED, TO BE ADOPTED ON
OCTOBER 16, 2000.

Introduction of an Ordinance approving the amendment to
the New Century Center Development Agreement between
the City of San Diego and LNR Kearny Mesa, Inc.

Subitem-J: (R-2001-439) ADOPTED AS RESOLUTION R-293931

Adoption of a Resolution summarily vacating Irrevocable
Offer of Dedications and slope easements with Map
13826, Map 13827 and Map 13980, as provided for under
Public Streets, Highways and Service Easements Vacation
Law, Section 8330 et. seq. and under California
Government Code, Section 66434(g).

OTHER RECOMMENDATIONS:

Planning Commission on August 17, 2000, voted 5-0 to
approve; no opposition.

Motion by Anderson to recommend to the City Council that
they approve Staff's revised recommendations as outlined in
their memo dated August 11, 2000 regarding residential
options and a new parking lot design, along with the
following additional conditions:

1. Residential emphasis mixed use requirement south of the
commons under the current zones on Lot 6;
2. In the negotiated Development Agreement that they
pursue with the applicants, affordable housing density
bonuses, not in lieu of the units that are permitted,
but in addition to the units that are permitted as
there is an opportunity to add additional housing,
shared parking and transit credits to reduce the cost
to the developers to provide the housing. Also because
there is a demand for the housing given the service
jobs in Kearny Mesa and within the project itself
including the hospital and hotel.

3. Ensure that there is access to the west that is done with similar frequency in a similar manner to that to the north.

Ayes: Steele, Anderson, Brown, Stryker, White
Not present: Butler, Skorepa

The Kearny Mesa Community Planning Group has recommended approval of the project.

SUPPORTING INFORMATION:

The New Century Center project (96-0165) is generally bounded by Clairemont Mesa Boulevard to the north, State Route 163 (SR-163) and Kearny Villa Road to the west, Ruffin Road to the east, and Balboa Avenue to the south.

The original project was approved on November 18, 1997, and consisted of a mixed-use retail, commercial and industrial/business park development. The principal features of the project included a planned commercial, retail, and entertainment use area located on the western side of the property facing Kearny Villa Road; a planned industrial and business park area located on the eastern side of the Property facing Ruffin Road; a system of roadways linking the retail and entertainment use area on the western side of the property to the industrial and business park area on the eastern side of the Property; a Market Square amenity in the center of the property; retention of approximately 7 acres of the existing Missile Park in the northeast corner of the property; and retention of approximately four acres in the southeast corner of the property as a vernal pool conservation area.

On August 5, 1999, the Planning Commission initiated a Community Plan Amendment to allow consideration of residential use in place of a portion of commercial and industrial use. Two workshops have been conducted to discuss the specific changes to the approved plan, one on February 24, 2000, and one on May 11, 2000.

At the July 20, 2000 hearing, Planning Commission raised a number of issues including the amount of residential use, residential density, affordable housing, the commitment to retail use, the lack of an urban feeling to the project, the lack of commercial-residential mixed-use, the location of utilities, and the design of parking areas. The commission continued the hearing to August 17, 2000, and asked staff to consider these and return with an analysis and potential project alternatives.

**Minutes of the Council of the City of San Diego
for the Regular Meeting of Tuesday, October 3, 2000**

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At the August 17, 2000 hearing, staff recommended the addition of residential use as a permitted use in the Mixed-use Commercial area of the plan and allowing the residential development in Planning area 3B to exceed the proposed 448 units. Up to 550 dwelling units in addition to the 448 units proposed in the residential portion of the plan would be permitted subject to the approval of a Planned Residential Development Permit decided in accordance with Process 4 for a maximum of 998 units.

FISCAL IMPACT:

None.

All costs associated with the processing of this project are paid from a deposit account maintained by the applicant. The Extraordinary Benefits required through the original Development Agreement will continue to be assured through the amended Development Agreement.

Loveland/Haase/fzm

LEGAL DESCRIPTION:

The proposed projects consist of two separate but interrelated proposals with the New Century Center Master Plan area, which consists of approximately 244 acres generally bounded by Kearny Villa Road to the west, Clairemont Mesa Boulevard to the north, Balboa Avenue to the south, and Ruffin Road to the east, in the Kearny Mesa Community Planning Area (see Figure 1, Location Map, Addendum to an Environmental Impact Report, LDR No. 99-1269). The current proposals would affect approximately 73 acres within the western portion of the Master Plan area.

Figure 2 (Addendum to an Environmental Impact Report, LDR No. 99-1269) represents the existing New Century Center Master Plan Land Use Plan. The New Century Center project (96-0165) is generally bounded by Clairemont Mesa Boulevard to the north, State Route 163 (SR-163) and Kearny Villa Road to the west, Ruffin Road to the east, and Balboa Avenue to the south.

FILE LOCATION: Subitems A,B,E,F,G,H: LAND-Kearney Mesa (10)
Subitems C,D,I: None.
Subitem J: DEED F-7865

COUNCIL ACTION: (Tape location: B096-322.)

Hearing began at 11:57 a.m. and halted at 12:14 p.m.

MOTION BY STALLINGS TO ADOPT THE RESOLUTIONS IN SUBITEMS A,B AND J; INTRODUCE THE ORDINANCES IN SUBITEMS C,D AND I; ADOPT THE RESOLUTIONS IN SUBITEMS E AND F, GRANTING THE MAPS; ADOPT THE RESOLUTIONS IN SUBITEMS G AND H, GRANTING PERMITS.

APPROVE THE MANAGER'S RECOMMENDATION WITH THE PLANNING COMMISSION'S CONDITIONS OF RESIDENTIAL EMPHASIS, MIXED USE REQUIREMENT SOUTH OF THE COMMONS; PURSUE AFFORDABLE HOUSING DENSITY BONUSES, AND PEDESTRIAN ACCESS BE PROVIDED TO THE COMMONS FROM ALL RESIDENTIAL PROJECTS. Second by Blair.

Passed by the following vote: Mathis-yea, Wear-yea, Kehoe-yea, Stevens-yea, Blair-yea, Stallings-yea, McCarty-yea, Vargas-yea, Mayor Golding-not present.

ITEM-332: University City Village.

Matter of an application to construct an additional 559 residential units, including second story additions to existing single story units; 80 assisted living units; CPA to redesignate the site from single-family to multi-family; and a rezone from R-1-5000 to R-2500. The site is located at 4633 Governor Drive.

(Case CUP/CPA/RZ-98-0408. University Community Plan Area. District-1.)

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolutions in subitems A and D; adopt the resolution in subitem C to grant the permit; and introduce the ordinance in subitem B.

Subitem-A: (R-2001-483) ADOPTED AS RESOLUTION R-293935

Adoption of a Resolution certifying that the information contained in LDR-98-0408 has been completed in compliance with the California Environmental Quality Act (CEQA) of 1970 and State (CEQA) guidelines, and that said Mitigated Negative Declaration (MND) reflects the independent judgement of the City of San Diego as Lead Agency; and stating for the record that the final MND has been reviewed and considered prior to approving this project by the Council pursuant to California Public Resources Code Section 21081.

Exhibit 4

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The Union-Tribune Publishing Company

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San Diego lags U.S. in home ownership

Housing industry blames environmental rules; others say prices of homes are artificially high

By Leslie Wolf Branscomb
UNION-TRIBUNE STAFF WRITER

May 23, 2001

As San Diegans, we're not so different from the rest of the nation in most respects: we're a little younger, we're more likely to be Latino, and we tend to have slightly larger families.

But in one area there is a continually widening gap between us and the rest of America: home ownership.

While most Americans continue to gain in that crucial indicator of affluence, residents of the city and the county of San Diego -- and Californians overall -- have been slipping behind the rest of the nation since the Great Depression.

Californians are less likely to own homes than anyone except those living in Hawaii, New York state and Washington, D.C.

■ Continuing coverage of Census 2000

If you live in the city of San Diego, chances are better than not that you rent, according to the figures released by the U.S. Census Bureau today.

Builders contend that tough environmental regulations in California have kept them from building new homes fast enough to meet demand.

"California has been regulating itself to death since the early '70s, and that has caught up with us," said Donna Morafcik of the San Diego County Building Industry Association. "It

makes for a very expensive process and a very slow process in terms of building homes."

Others say home prices are artificially high, and that's what keeps ownership low.

"The cost of housing has gone up astronomically in the last year or two, and the cost of environmental regulations has not," said Eric Bowlby of the San Diego chapter of the Sierra Club.

The median price for single-family homes in San Diego County was \$265,000 as of March. Three years ago it was \$203,000.

Bowlby said builders are seeking enormous profits from construction of huge houses rather than focusing on creating more low-cost housing. "They are getting big dollars for those homes, and they are making a bundle," Bowlby said. "Meanwhile, our affordable housing crisis marches on."

Dowell Myers, a professor of urban planning at the University of Southern California, offered an additional reason why home ownership is so low. "California attracts a lot of migrants," he said, "and migrants tend not to buy houses."

A housing ownership survey done by the U.S. Census and spanning the past century shows how California has fallen behind the rest of the nation.

With a few exceptions, such as during the Depression, home ownership has steadily increased nationwide. The average rate of home ownership in the United States is now 66.2 percent.

Americans are most likely to own their own homes in West Virginia, which has a 75 percent home ownership rate. The rates in Michigan, Minnesota and Missouri top 72 percent.

Nowhere in the nation are residents less likely to own homes than in Washington, D.C., which has had the lowest rate for most of the century and only hit the 40 percent mark for the first time last year.

A drop since 1960

In the basement

Home ownership in California and in the city and county of San Diego has long lagged behind that in the nation as a whole, a trend borne out in these recent census figures.

Percentage of owner-occupied housing units in 1990:

| | |
|------------------|-------|
| U.S. | 64.2% |
| California | 55.6% |
| San Diego County | 53.8% |
| San Diego city | 48.3% |

Percentage of owner-occupied housing units in 2000:

| | |
|------------------|-------|
| U.S. | 66.2% |
| California | 56.9% |
| San Diego County | 55.4% |
| San Diego city | 49.5% |

Source: U.S. Census Bureau

In California, while residents are still more likely to own homes than 100 years ago, they aren't gaining as quickly as almost all other states.

In fact, California home ownership, now at nearly 57 percent, has declined since its highest point in 1960, when more than 58 percent of the Golden State's residents owned homes.

It wasn't always so.

In 1900, 46.3 percent of the state's residents owned their own homes, just a notch below the national average. Ten years later, Californians were ahead of the pack, almost 4 percent more likely to own homes than the rest of Americans.

During the 1940s, figures nationwide and in California dipped to about 43 percent.

Since then, home ownership in California has been sliding in comparison to the rest of the nation. In 1950, Californians were 0.7 percent less likely than the rest of Americans to own homes. In 1960, the gap widened to 3.5 percent, then to 8 percent in 1970, 8.6 percent in 1990 and now 9.3 percent.

Residents of San Diego County have fared even worse. Only 55.4 percent of county residents own their own homes, and in the city of San Diego it's less than half, 49.5 percent.

The average cost of a new home in San Diego County is \$409,262. "It's extraordinarily high," Morafcik said. "San Diego is the ninth-least-affordable housing market in the nation, the last I heard. Not a very proud number."

Move to Arizona

Margaret Luch, 33, is among the city of San Diego's 227,411 renters. She stays home with her young son and works on her master's degree while her husband works full time.

After four years of searching and thinking about the future, Luch believes she and her family will have to move to Arizona to be able to afford a home.

"I would love to work full time, but would not want to leave my son (in day care)," the dietitian said. "I think San Diego is an unbelievable place to live and even own a home, if you don't have a child."

Lillian Wotton, a 75-year-old widow, has fewer options.

She is facing eviction because her rent has tripled to \$650 for her

Morena-area apartment and she can't pay it on her \$900-a-month Social Security income.

"I've talked to senior citizens who have moved to Mexico because they couldn't find a place here they could afford," said Wotton, a Kentucky coal miner's daughter.

"I've been in San Diego since 1956, and I have seen the changes and things weren't bad then," she said. "Now it's like boiling water (and) the pot is boiling over."

The figures released by the Census Bureau so far for 2000 don't include the value of homes, the cost of rent or residents' income.

For purposes of tallying home ownership, a shotgun shack counts the same as a mobile home, a condominium or a mansion.

Affluent areas

In San Diego County, they show home ownership is very high, more than 93 percent, in the affluent communities of Fairbanks Ranch, San Diego Country Estates and Hidden Meadows, a North County community that includes the Lawrence Welk Resort.

Imperial Beach has by far the county's highest percentage of renters at 70 percent. More than 59 percent of El Cajon residents rent, as do almost 53 percent of La Mesans.

The U.S. Census Bureau is releasing information from the 2000 Census gradually over the next two years. The most recently released data include figures on household size and type and a more detailed breakdown of the age and race of California residents.

The San Diego County data contain some interesting anomalies: for instance, the U.S. Marine base on the north part of Camp Pendleton has the county's highest concentration of men, 69.4 percent, and the lowest median age, 21.4.

On the other side of the spectrum, the retirement community of Lake San Marcos has the highest percentage of women at 56.5 percent, and the highest median age at nearly 71.

Staff writer Roger Showley contributed to this report.

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Exhibit 5

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Published on February 1, 2007

Breaking Stories: Aaron's Gold

By Matt Potter

The developer who's stirred controversy by building a high-rise office building smack in the flight path of Montgomery Field is a longtime veteran of local, state, and federal politics, funneling thousands of dollars to a variety of his favorite candidates. On April 21, 2005, campaign records show, **Aaron Feldman**, who's been doing business under the Sunroad banner for more than two decades, gave \$2100 to the campaign of GOP congressman **John Campbell** of Irvine, elected in a December 2005 special election. He replaced former representative **Chris Cox**, who had been appointed chairman of the Securities and Exchange Commission. That same year, Feldman contributed \$1000 to the Democratic congressional campaign of then assemblyman **Juan Vargas**, who lost to incumbent **Bob Filner** in the June 2006 primary. But Feldman had also backed the winner, giving Filner \$2100 in March 2005. The same year, Feldman's son **Uri** gave \$500 to Filner and \$250 to Vargas. In May 2006, Feldman, listed as president of Sunroad Enterprises, gave Vargas another \$1000; in the election cycle before that, Feldman gave Filner \$2000 on October 1, 2004.

Feldman was also a major financial backer of ex-San Diego mayor **Susan Golding's** political career, including her short-lived bid for U.S. Senate. In May 1997, records show, he kicked in \$1000; **Don Connors**, listed as a Sunroad employee, gave \$250. Golding was responsible for cutting the deal between General Dynamics and the City that resulted in creation of the office and commercial park where the sprawling aerospace factory used to be. On November 19, 1997, the Golding-led city council unanimously approved the 232-acre development, called New Century Center, clearing the way for General Dynamics to dispose of the land. It was sold to Lennar Partners for \$80 million in July 1998, and Lennar renamed the project San Diego Spectrum. Two years later, in December 2000, Sunroad bought 40

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acres of the property from Lennar. That's where Feldman's infamous office tower is now rising.

Besides Feldman's political largesse, Sunroad employs a virtual army of lobbyists to make the rounds at city hall. According to the most recent disclosure reports, they include **Jeffrey Forrest**, **John Ponder**, and **Donna Jones** of the law firm of Sheppard, Mullin, Richter & Hampton; **Barbara Lichman** of the firm Chevalier, Allen & Lichman; and **Mitchell Berner**, a veteran of the local influence-peddling trade and top staffer to Golding when she was on the county board of supervisors in the 1980s. Other old Golding hands are now back in city government, thanks to the election of Mayor **Jerry Sanders**. Chief among them is **Fred Sainz**, the mayor's influential press aide, who was once one of Golding's top deputies.

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Exhibit 6



THE CITY OF SAN DIEGO

MANAGER'S REPORT

DATE ISSUED: January 23, 2002

REPORT NO. 02-019

ATTENTION: Honorable Mayor and City Council
Docket of January 29, 2002

SUBJECT: SUNROAD AT SAN DIEGO SPECTRUM - INITIATION OF A
DEVELOPMENT AGREEMENT AMENDMENT. COUNCIL
DISTRICT 6. PROCESS FIVE.

REFERENCE: Report to the Planning Commission for the agenda of December 6, 2001 -
Report No. P-01-234. Development Agreement Between the City of San
Diego and General Dynamics Properties, Inc., adopted December 2, 1997.

OWNER/
APPLICANT: Sunroad Centrum Partners, L.P.

SUMMARY

Issue(s):

1. Should the City Council initiate an amendment to the General Dynamics Development Agreement to allow additional residential development at San Diego Spectrum?
2. Should the City's existing standard population-based park requirements apply to new multi-family residential development at San Diego Spectrum?

Staff Recommendation:

1. Initiate the amendment to the General Dynamics Development Agreement.
2. Apply existing population-based park requirements to all new multi-family residential development at San Diego Spectrum.

Planning Commission Recommendation: On December 6, 2001, the Planning Commission voted unanimously (6-0) to recommend City Council initiation of an amendment to the General Dynamics Development Agreement. The Planning Commission also provided direction regarding the application of population-based park requirements to new residential development at San Diego Spectrum (See Planning Commission discussion under the Background section of this Report).

Community Planning Group Recommendation - On November 21, 2001, the Kearny Mesa Community Planning Group voted (9-0-1) to recommend that the City's standard population based park requirements be studied to determine if they are appropriate for higher density residential infill projects. (See Attachment 6-Planning Group's Letter).

Environmental Impact - This activity (Development Agreement Amendment initiation) is not a "project" and therefore is exempt from CEQA pursuant to State CEQA Guidelines Section 15060(c)(3). City staff is currently in the process of drafting a Mitigated Negative Declaration, which will be processed with the proposed Sunroad project if the Development Agreement amendment process is initiated.

Fiscal Impact - All costs associated with the processing of this project are paid from a deposit account maintained by the applicant. The Extraordinary Benefits required through the original Development Agreement will continue to be assured through the amended Development Agreement.

Code Enforcement Impact - None with this action.

Housing Affordability Impact - None with this action. The Sunroad project will include a requirement that 10% of the units will be affordable to households earning no more than 65% of median income.

BACKGROUND

The original New Century Center project was approved by the City Council on December 2, 1997, allowing General Dynamics (the original owner) to develop a high-density mixed-use retail, commercial and industrial business park on 242-acres centrally located within the community of Kearny Mesa (see Attachment 2). A Development Agreement (D.A.) between the City of San Diego and General Dynamics was approved concurrently with the New Century Center project.

In 1998, the D.A. was revised when LNR Kearny Mesa, Inc. purchased the New Century Center project from General Dynamics. In October of 2000, the D.A. was revised once again when the City Council approved LNR's San Diego Spectrum project, allowing for a wide variety of land use changes including the development of a 448-unit multi-family residential project on Planning

Area 3B (see Attachment 3).

During public hearings to consider the San Diego Spectrum project, an additional 550 residential dwelling units were approved pursuant to direction from both the Planning Commission and City Council, who recommended additional residential development at higher densities within San Diego Spectrum. The additional 550 units were allocated to Planning Areas 1B (to be predominantly residential), 1A, 2B, and 3A (see Attachment 4). In addition to the 550 additional units, the Planning Commission and City Council also encouraged more residential development throughout the San Diego Spectrum project in the future. Existing population-based park standards were not applied to either the 448 multi-family dwelling units nor the 550 additional units. These 998 units would generate a need for 6.0 acres of park land and facilities per the General Plan Standards.

In February of 2001, in response to encouragement from the City to provide residential at San Diego Spectrum, Sunroad Centrum Partners submitted an application to amend the Progress Guide and General Plan and New Century Center Master Plan to construct additional housing units within San Diego Spectrum. On April 5, 2001, the Planning Commission initiated the plan amendment process.

Planning Commission Discussion - On December 6, 2001, the Planning Commission voted unanimously to initiate the amendment to the General Dynamics Development Agreement, and recommended that existing population-based park requirements be maintained, but that the standards be applied at San Diego Spectrum in a more creative and flexible manner (See attachment 5, Planning Commission Resolution).

The Planning Commission discussion focused on balancing the public's demand for active playing fields while meeting the goal of developing urban villages through residential infill projects. Some Commissioners believed that strict application of the park standards would impede the City's and developer's efforts to create urban villages, while other Commissioners felt that active playing fields should be available to all future residents.

Ultimately the Planning Commission recommended that park credit should be considered for different types of open space including on-site pocket parks, linear park areas, swimming pools, and portions of Missile Park not developed by the YMCA and open to the public for park purposes. The Planning Commission emphasized the need to provide useable park land, to be free and open to the public at all times. On-site park land should be considered to provide for convenient access by future residents at San Diego Spectrum.

DISCUSSION

Development Agreement Amendment:

City Council Policy 600-37 requires City Council initiation of a development agreement

amendment prior to negotiations. Residential development beyond the 448 units approved for LNR is not currently assumed within the D.A., therefore an amendment to the D.A. is required. The proposed modifications to the D.A. will allow Sunroad to develop up to an additional 1,120 dwelling units (550 + 570) on Subareas 1A, 2B, and 3A.

Park Requirements:

Residential development proposed by Sunroad (570 additional dwelling units) will generate the need for additional public parks within the community. City staff uses park standards as established in the Recreation Element of the Progress Guide and General Plan to determine specific park requirements. City staff currently assume that each residential dwelling unit will generate a total of 2.5 residents per unit; and will require residential developers to provide a total of 2.4 useable park acres per 1,000 population.

Using these standards, City staff has determined that Sunroad will be required to provide 3.42 acres of land, either on-site or within one-half mile of the project, for a public park (estimated cost-\$2.97 million). Sunroad must also provide funding for the design and construction of the required on-site park facilities (estimated cost-\$855,500), as well as their pro rata share of the cost of constructing a 15,000-square-foot recreation building and swimming pool (estimated cost - \$256,000). Total estimated cost is \$4.09 million.

Sunroad is opposed to these park requirements for the following reasons:

1. The park standards are outdated. The General Plan population based park standards were adopted over 20 years ago;
2. The park standards are based on suburban development, and should not be applicable to urban infill development which typically has a lesser person per household ratio;
3. The park requirements are excessive (in this case over \$4 million), and will reduce the City's ability to encourage residential intensification as recommended by the City's draft Strategic Framework Plan;
4. The park standards are inconsistent with the City's efforts on the Strategic Framework Plan. Relevant draft Strategic Framework Plan policies include:

"Developing alternative methods of providing park and recreation areas for urban and built-out communities in recognition of available land constraints and existing opportunities for the integration of public space with recreation space"; and

"The provision of adequate infrastructure and public facilities is a linchpin for the entire growth strategy. New funding sources, reallocation of existing resources, and adjustments to certain facilities standards are all part of the strategy for accommodating new growth and remedying existing deficiencies"; and

"The Recreation Element of the General Plan should be updated to include a Park Master Plan and to address the role of small parks and plazas in meeting recreation needs".

Staff and the applicant have been working together over the past several months to formulate a mutually acceptable solution to this park issue. The following options (currently included as park mitigation measures in the draft Mitigated Negative Declaration) were offered to the developer to satisfy the City's population-based park requirements, to conform to the State Subdivision Map Act (Quimby Act) under Government Code section 66499, and in recognition of the City's multiple goals pertaining to the draft proposed growth strategy and the adopted park requirements:

- A. The developer shall provide 3.42 contiguous, usable (maximum 2% grade for active recreation) acres of land within their development for park and recreation purposes, and provide funding for the design and construction of the required public recreational facilities on the provided acreage, plus their pro rata share of the cost of constructing a 15,000 square-foot recreation building and swimming pool; OR
- B. The developer shall acquire 3.42 contiguous, usable (maximum 2% grade for active recreation) acres of land within a one-half mile radius of their development, acceptable to the City Manager, and provide funding for the design and construction of the required public recreational facilities on the provided acreage, plus their pro rata share of the cost of constructing a 15,000 square-foot recreation building and swimming pool; OR
- C. The developer shall provide a minimum of 2.0 contiguous, usable (maximum 2% grade for active recreation) acres of land within their development, provide the funding for the design and construction of the required public recreational facilities on the provided acreage, plus their pro rata share of the cost of constructing a 15,000 square-foot recreation building and swimming pool, and meet one of the following:
 - 1) Pay in lieu fees equivalent to the acquisition, design and construction of the remainder of the required 3.42 acres not provided on-site acceptable to the City Manager; OR
 - 2) Provide the remainder of the required 3.42 acres within their development as contiguous, usable (maximum 2% grade for active recreation) fully-developed land acceptable to the City Manager; OR
 - 3) Provide a combination of in lieu fees and contiguous, usable (maximum 2% grade for active recreation) fully-developed land within their development acceptable to the City Manager which, in combination, is equivalent to the remainder of the required 3.42 acres.

The applicant believes these park requirements will render any residential infill development at San Diego Spectrum economically infeasible, and cannot agree to this park mitigation. Therefore, City staff is seeking City Council policy direction regarding population-based park requirements for this urban infill residential project.

In addition to the park requirement options stated above, the following additional recommendations are offered for consideration:

ALTERNATIVES

1. Revise the Kearny Mesa Public Facilities Financing Plan in order to:
 - A. Identify more accurately and comprehensively the population based park requirements for Kearny Mesa, instead of attempting to provide population-based park requirements on a project by project basis.
 - B. Assure all residential developers are paying their fair share of park fees (Development Impact Fees for parks would be increased).
 - C. Assure that adequate funds are being collected to finance the acquisition, design, and construction of needed population based parks.

Although this alternative would collect the needed funds to develop future parks and other recreational facilities, it would not assure the development of a park where needed - within one-half mile of the residential development. However, small on-site public park areas within each development (public pocket parks, public swimming pools, public recreation buildings) could satisfy a portion of this park deficiency.

2. Revise the population based park requirements for high-density, infill residential development.

This effort will be more appropriately and comprehensively accomplished City-wide through the Strategic Framework Planning process. Until these revised standards are adopted, the City Council could impose some other park standard for the Sunroad project.

3. Provide park credit for public open space and parkland not owned by the City of San Diego:

Missile Park is a privately owned 6.6-acre park proposed to be developed as a YMCA facility. The YMCA and Sunroad are willing to enter into an agreement to set aside 3-4 acres as fully-developed public park land. This could satisfy the park requirements for the Sunroad project, however City policy prohibits giving park credit for privately held

land. It should be noted that the previously approved 998 multi family dwelling units would generate a need for 6.0 acres of parkland, therefore there would still be an unmet need for 3.42 acres of park land and facilities

Respectfully submitted,

Tina P. Christiansen, A.I.A.
Development Services Director

Approved: P. Lamont Ewell
Assistant City Manager

CHRISTIANSEN/MJW

ATTACHMENTS: 1. Project Location Map.
 2. Original (1997) New Century Center Land Use Plan.
 3. LNR's (2000) San Diego Spectrum Land Use Plan.
 4. San Diego Spectrum Planning Exhibit.
 5. Planning Commission Resolution.
 6. Kearny Mesa Planning Group Letter.

Exhibit 7



THE CITY OF SAN DIEGO

MANAGER'S REPORT

DATE ISSUED: November 6, 2002 REPORT NO. 02-257

ATTENTION: Honorable Mayor and City Council
Docket of November 12, 2002

SUBJECT: SUNROAD AT SAN DIEGO SPECTRUM - AMENDMENTS TO THE
PROGRESS GUIDE AND GENERAL PLAN; KEARNY MESA
COMMUNITY PLAN; NEW CENTURY CENTER MASTER PLAN,
DEVELOPMENT STANDARDS, AND DESIGN MANUAL;
AMENDMENTS TO THE GENERAL DYNAMICS DEVELOPMENT
AGREEMENT; AND A REZONE. Council District 6. Process 5.

REFERENCE: Development Agreement Between the City of San Diego and General
Dynamics Properties, Inc., adopted December 2, 1997. Report to the
Planning Commission No. P-01-075, Initiation Hearing of April 5, 2001.
Report to the Planning Commission No. P-01-234, Development
Agreement Initiation Hearing of December 6, 2001. City Manager's
Report No. 02-019, Development Agreement Initiation Hearing of January
29, 2002. Report to the Planning Commission No. P-02-073, Hearing of
June 13, 2002.

OWNER/
APPLICANT: Sunroad Centrum Partners, L.P.

SUMMARY

Issues - Should the City Council approve amendments to the Progress Guide and General Plan; Kearny Mesa Community Plan; New Century Center Master Plan, Development Standards, and Design Manual; Amendments to the General Dynamics Development Agreement; and a Rezone, in order to allow Sunroad Centrum Partners to construct 570 additional dwelling units at San Diego Spectrum?

Staff's Recommendation

1. CERTIFY Mitigated Negative Declaration No. 41-0101, and ADOPT the associated Mitigation, Monitoring, and Reporting Program; and
2. APPROVE amendments to the Progress Guide and General Plan; Kearny Mesa Community Plan; New Century Center Master Plan, Development Standards, and Design Manual; Amendments to the General Dynamics Development Agreement; and a Rezone.

Planning Commission Recommendation - On June 13, 2002, the Planning Commission voted unanimously (5-0) to approve the Sunroad project with the following recommendations: 1) The voluntary affordable housing requirement for Sunroad's additional 570 units should be increased from 10 percent to 20 percent; and 2) Language should be added to the New Century Center Development Standards to strengthen the recommendation for mixed-use. Single use areas and big box uses, in particular those that are auto-oriented, should be strongly discouraged unless incorporated as part of a vertically mixed use development. City staff and Sunroad support recommendation number 2, but recommend that the 10 percent affordable housing requirement be retained (see discussion section of this report).

Community Planning Group Recommendation - On April 17, 2002, the Kearny Mesa Community Planning Group voted (13-0-1) to recommend approval of this project.

Environmental Impact - The City of San Diego as Lead Agency under CEQA has prepared and completed Mitigated Negative Declaration LDR No. 41-0101, dated January 31, 2002, and a Mitigation, Monitoring and Reporting Program covering this activity.

Fiscal Impact - All costs associated with the processing of this project are paid from a deposit account maintained by the applicant. The Extraordinary Benefits required through the original General Dynamics Development Agreement will continue to be assured through the amended Development Agreement.

Code Enforcement Impact - None with this action.

Housing Impact Statement - The project includes an affordable housing component for the additional 570 dwelling units, requiring that 10 percent of these units be reserved for households earning no more than 65 percent of median income, or an equivalent program acceptable to the City Manager and Housing Commission.

Traffic Impact Statement - The proposed Sunroad at San Diego Spectrum project is estimated to generate approximately 3,420 average daily trips (ADT). 510 of these trips are estimated to occur on SR-163 south of Balboa Avenue, which has an estimated near-term plus project volume of 177,510 ADT and operates at an acceptable level of service "D". This project will improve the jobs/housing balance in the Kearny Mesa Community.

Water Quality Impact Statement - The requested approvals include land use policy amendments and a rezone only, and do not permit immediate land development. Planned development permits will be required for all future development, which will require implementation of Best Management Practices on-site to reduce and/or eliminate construction phase and post construction runoff of pollutants.

BACKGROUND

The original New Century Center project was approved by the City Council on December 2, 1997, allowing General Dynamics (the original owner) to develop a high-density mixed-use retail, commercial and industrial business park on 242-acres centrally located within the community of Kearny Mesa (see Attachment 2). The original project's principle goal was to reposition the property through flexible, market-driven land use designations to permit a variety of retail, office, entertainment, institutional, and light industrial uses surrounding a central amenity area known as Market Square. The New Century Center project designated the western 85 acres for Retail, Entertainment, and Commercial land uses (up to 1.4 million square-feet), and the eastern 158 acres for Industrial and Business Park land uses (up to 3 million square-feet).

In 1998, LNR Kearny Mesa, Inc. purchased the New Century Center project from General Dynamics. In October of 2000, the City Council approved LNR's new project called San Diego Spectrum, which revised the previously approved New Century Center project. The San Diego Spectrum project eliminated Market Square and replaced it with Spectrum Commons, changed the land use in the western portion of the project from retail/entertainment commercial to mixed-use commercial, and changed the land use on Planning Area 3B from commercial to medium density residential. The City Council also approved a Planned Residential Development Permit to develop a 448-unit multi-family residential project on Planning Area 3B (see Attachment 3).

During public hearings to consider the San Diego Spectrum project, an additional 550 residential dwelling units were approved pursuant to direction from both the Planning Commission and City Council, who recommended additional residential development at higher densities within San Diego Spectrum. The additional 550 units were allocated to Planning Areas 1B (to be predominantly residential), 1A, 2B, and 3A (see Attachment 4). In addition to the 550 additional units, the Planning Commission and City Council also encouraged more residential development throughout the San Diego Spectrum project in the future.

In February of 2001, in response to encouragement from the City to provide more residential at San Diego Spectrum, Sunroad Centrum Partners submitted an application to amend the New

Century Center Master Plan to construct 570 additional housing units within San Diego Spectrum. On April 5, 2001, the Planning Commission initiated the plan amendment process.

During the processing of the Master Plan amendment, staff identified the need to provide active park areas for the future residents of the San Diego Spectrum project. City staff determined that Sunroad would need to provide a total of 3.42 acres of park land. Sunroad originally opposed this requirement, and the issue was considered by the Planning Commission on December 6, 2001, and the City Council on January 29, 2002. Ultimately, the City Council directed both City staff and the applicant to provide all neighborhood park and recreation facilities per the City's standard population based park requirements. The Sunroad project currently includes a requirement for 3.42 acres of public park land (see "Park Requirements" discussion below).

On June 13, 2002, the Planning Commission voted unanimously (5-0) to approve the Sunroad project with the following recommendations:

1. The voluntary affordable housing requirement for Sunroad's additional 570 units should be increased from 10 percent to 20 percent;
2. Language should be added to the New Century Center Development Standards to strengthen the recommendation for mixed-use. Single use areas and big box uses, in particular those that are auto-oriented, should be strongly discouraged unless incorporated as part of a vertically mixed use development.

City staff and Sunroad support recommendation number 2, but do not support recommendation number 1.

Sunroad is opposed to the 20 percent affordable housing recommendation, and City staff continues to recommend a 10 percent affordable housing requirement for the following reasons:

- On August 6, 2002, the City Council adopted components of an inclusionary housing program that requires 10 percent of new residential units be affordable. The City Council directed staff to proceed with the preparation of implementing ordinances, however these ordinances are not currently in effect and Sunroad is not legally required to provide any affordable housing units. Through a negotiation process with City staff, the applicant voluntarily agreed to provide 10 percent affordable housing on site. This voluntary 10% affordable housing requirement is consistent with the City Council's actions on August 6.
- The 20 percent affordable housing recommendation would be imposed inequitably and exclusively to Sunroad's proposed 570 dwelling units, while the remaining 998 units previously approved at San Diego Spectrum would not be burdened with any affordable housing requirement. This situation would put Sunroad's housing development at an unfair economic disadvantage relative to surrounding residential properties.

- The recommended 20 percent affordable housing recommendation combined with the population based-park requirement (to provide a 3.42-acre park) apply only to Sunroad, and would likely render the project economically infeasible, particularly relative to surrounding residential development which can and has been developed without these requirements. Buildout of the recommended Sunroad project includes needed multi-family housing, 57 affordable housing units, and 3.42-acres of active park land.

PROJECT DESCRIPTION

The proposal includes land use policy amendments and a rezone to allow Sunroad to construct an additional 570 dwelling units within San Diego Spectrum on planning areas 1A, 1B, 2B, and/or 3A. The New Century Center Master Plan currently allows a total of 998 dwelling units, therefore the proposal would increase the total maximum number of residential dwelling units permissible at San Diego Spectrum to 1,568.

The proposal includes the rezone of the 8.2-acre planning area 3A from M-1B to CA to allow residential use as an option within this planning area.

In addition to residential uses, office, hotel, restaurant, and retail uses which are currently permissible within these planning areas would continue to be permissible uses.

Proposed Land Use Policy Changes:

| <u>Planning Area</u> | <u>Existing Land Use</u> | <u>Proposed Land Use</u> |
|----------------------|--------------------------|----------------------------------|
| 1A (23.1 acres) | General Commercial | Mixed Use Commercial/Residential |
| 1B (7.3 acres) | General Commercial | Mixed Use Commercial/Residential |
| 2B (10 acres) | General Commercial | Mixed Use Commercial/Residential |
| 3A (8.2 acres) | Industrial Business Park | Mixed Use Commercial/Residential |

Other project features include the following: 1) The project includes an affordable housing component requiring that 10 percent of the requested units be reserved for households earning no more than 65 percent of median income, or an equivalent program acceptable to the City Manager and Housing Commission; 2) The proposal includes the relocation of a San Diego Gas and Electric Company electrical substation to a planned non-residential portion of the project area.

Development Agreement Amendment:

The existing Development Agreement does not currently allow residential development on Planning Areas 1A, 2B, or 3A. Therefore, the Development Agreement must be revised to accommodate Sunroad's request to construct an additional 570 dwelling units on these planning areas.

The Development Agreement is also being revised to allow the recently adopted (August 5, 2002) Development Impact Fees to apply to new residential development proposed by Sunroad. Currently, the Development Agreement vests the fees for residential development at the rate adopted in 1997 - \$1,545 per unit. The new fees for residential development are \$7,536 per unit. When the Kearny Mesa Public Facilities Financing Plan was adopted in 1997, residential development was never contemplated within the San Diego Spectrum project, so adequate park facilities were never identified, nor were adequate DIFs established to provide needed population based parks.

Community Plan Analysis:

The proposal is consistent with the goals and objectives of the Kearny Mesa Community Plan. The primary goal of the Housing Element is as follows:

Where not in conflict with the overall community goals, preserve, or allow in-fill residential neighborhoods within Kearny Mesa, and protect them from commercial and industrial encroachment. (page 77)

The proposal fulfills this goal by providing additional housing without reducing the potential for industrial or employment use. This will be accomplished by building by intensifying the office use currently planned for the site. The development and design standards address the buffering of the residential units.

The plan amendment associated with this item is related to 1) changes in land use: 8 acres from Industrial to Mixed Use Commercial and 40 acres from General Commercial to Mixed Use Commercial/Residential as identified in the project description; 2) modification of a zoning map to reflect the rezoning from M-1B to CA; and 3) indicating the new street name for Spectrum Center Boulevard.

The amendments to the New Century Center Master Plan, which is Volume I of the three volume master permit, also constitute a community plan amendment since it was adopted as an appendix to the Kearny Mesa Community Plan. These amendments include a new planning objective related to pedestrian linkages between residential and commercial uses, and to linking uses with common landscape themes. Also included in the Implementation section is text specifying that a Process 4 Planned Residential Development Permit is required for future residential development, requiring a hearing before the Planning Commission. This provision supports the Planning Commission's comments at the hearing for the previous amendment regarding a desire to see the design of the 550 units approved at that time.

Staff does not believe that the loss of industrial land is considered significant in this case because it involves the deletion of planned office use rather than industrial use, and replacement with residential use, which is in very short supply. Regarding other policy issues raised by the Planning Commission at the initiation of this project:

1. Design guidelines have been added addressing the integration of the residential uses with the commercial uses. While mixed use structures are not required or contemplated at this time, the alternative conceptual site plans show the residential units wrapping around the office uses. The Master Plan permits and encourages mixed use projects within the individual planning areas.
2. The proposed residential is in close proximity to the future Transit Center and pedestrian connections have been delineated.
3. An affordable housing requirement has been provided requiring 10 percent of the units be affordable, defined as units to be rented or sold to households earning no more than 65 percent of median income, or an equal program acceptable to the City Manager. This requirement only applies to units after the 550 previously approved units.
4. Concepts of the Transit Oriented Development Design Guidelines, Urban Village Overlay Zone, and draft Strategic Framework Element are incorporated into the master plan and permit. Already approved are the Transit Center; and mixture of employment, residential, and support retail uses; a pedestrian orientation with the use of parking structures located behind commercial structures, strong pedestrian connections, a central commons area, and a small passive park. Proposed features with this proposal include design standards for the integration of residential use with commercial use, design standards for office parking structures facing residential use, a requirement for residential units to have entrances facing the street, and establishment of a minimum density requirement.

Park Requirements:

Residential development proposed by Sunroad (570 additional dwelling units) will generate the need for additional public parks within the community. City staff uses park standards as established in the Recreation Element of the Progress Guide and General Plan to determine specific park requirements. City staff currently assume that each residential dwelling unit will generate a total of 2.5 residents per unit; and will require residential developers to provide a total of 2.4 useable park acres per 1,000 population.

Using these standards, City staff has determined that Sunroad will be required to provide 3.42 acres of land, either on-site or within one-half mile of the project, for a public park. Sunroad must also provide funding for the design and construction of the required on-site park facilities,

as well as their pro rata share of the cost of constructing a 15,000-square-foot recreation building and swimming pool.

The following options (currently included as park mitigation measures in the Mitigated Negative Declaration) are available to the developer to satisfy the City's population-based park requirements:

Prior to building permit issuance for the 999th residential unit within the San Diego Spectrum project, the owner/permittee shall meet, or assure through agreement or bond, one of the following mitigation options to the satisfaction of the City Manager:

- A. The developer shall provide 3.42 contiguous, usable (maximum 2% grade for active recreation) acres of land within their development for park and recreation purposes, and provide funding for the design and construction of the required public recreational facilities on the provided acreage, plus their pro rata share of the cost of constructing a 15,000 square-foot recreation building and swimming pool; OR
- B. The developer shall acquire 3.42 contiguous, usable (maximum 2% grade for active recreation) acres of land within a one-half mile radius of their development, acceptable to the City Manager, and provide funding for the design and construction of the required public recreational facilities on the provided acreage, plus their pro rata share of the cost of constructing a 15,000 square-foot recreation building and swimming pool; OR
- C. The developer shall provide a minimum of 2.0 contiguous, usable (maximum 2% grade for active recreation) acres of land within their development, provide the funding for the design and construction of the required public recreational facilities on the provided acreage, plus their pro rata share of the cost of constructing a 15,000 square-foot recreation building and swimming pool, and meet one of the following:
 - 1) Pay in lieu fees equivalent to the acquisition, design and construction of the remainder of the required 3.42 acres not provided on-site acceptable to the City Manager; OR
 - 2) Provide the remainder of the required 3.42 acres within their development as contiguous, usable (maximum 2% grade for active recreation) fully-developed land acceptable to the City Manager; OR
 - 3) Provide a combination of in lieu fees and contiguous, usable (maximum 2% grade for active recreation) fully-developed land within their development acceptable to the City Manager which, in combination, is equivalent to the remainder of the required 3.42 acres.

Transportation Requirements:

A traffic study was completed for this project which determined that the P.M. peak traffic is the critical peak. During the P.M. peak, the additional residential units are expected to generate 307 trips. One of the traffic mitigation measures imposed at the time of approval of the original

Master Plan was the provision of an internal shuttle. The early implementation of this internal shuttle system would result in a reduction of internal trips which would offset the additional trips associated with the proposed increase in residential units. With the implementation of this requirement as outlined in the project's Mitigation, Monitoring, and Reporting Program, the traffic impacts projected to result from the development of an additional 570 dwelling units would be mitigated to below a level of significance.

Respectfully submitted,

Tina P. Christiansen, A.I.A.
Development Services Director

Approved: P. Lamont Ewell
Assistant City Manager

CHRISTIENSEN.MJW

Note: The attachments are not available in electronic format. A copy is available for review in the Office of the City Clerk.

- Attachments:
1. Project Location Map.
 2. Original (1997) New Century Center Land Use Plan.
 3. LNR's (2000) San Diego Spectrum Land Use Plan.
 4. San Diego Spectrum Planning Exhibit.
 5. Proposed Land Use Designation Amendments.
 6. Proposed Rezoning Map.
 7. Draft Rezoning Ordinance.
 8. Draft Development Agreement Amendment.
 9. Draft New Century Center Master Plan, Development Standards, and Design Manual (under separate cover).

Exhibit 8

January 24, 2002

Personal Delivery

Mayor Dick Murphy
and City Councilmembers
City of San Diego
202 C Street, 10th and 11th Floors
San Diego, California 92101

Re: City Council Docket of January 29, 2002, Item No. 330, Development Agreement
Between City of San Diego and Sunroad Centrum Partners, LP, Successor in
Interest to General Dynamics Properties, Inc.

Dear Mayor Murphy and City Councilmembers:

The matter before you is the initiation of an amendment to an existing development agreement. However, the real issue to be discussed will be the application of existing City of San Diego ("City") standards to high density infill development in the City. The City Planning Commission and you, are calling for urban infill mixed use "City of Villages" development throughout the City. The Sunroad Centrum Partners, LP ("Sunroad") project within the San Diego Spectrum Master Plan ("Master Plan") proposes to develop a village.

Background

In the fall of 2000, the Planning Commission and City Council were presented with an amendment to the Master Plan. That amendment only proposed adding four hundred forty eight (448) multi-family dwelling units. Both the Planning Commission and City Council recommended and approved an additional amendment to the Master Plan that added another five hundred fifty (550) multi-family dwelling units for a total of nine hundred ninety eight (998) approved dwelling units for specific properties within the Master Plan, including Sunroad's.

The Planning Commission and City Council desired even more residential density. Both asked Sunroad to consider adding to the approved nine hundred ninety eight (998) multi-family dwelling units. In response to that strong encouragement, Sunroad sought an initiation of a Master Plan amendment in February 2001. On April 5, 2001, the City Planning Commission initiated that process. The amendment that will be presented to you in the near future proposes to add up to five hundred seventy (570) additional multi-family dwelling units. That would bring the total dwelling unit count to the San Diego Spectrum project to one thousand five hundred sixty eight (1,568) dwelling units ($998 + 570 = 1568$).

Financial Feasibility

In processing the plan amendment that would create the Sunroad Centrum Village, Sunroad is finding it to be financially infeasible to construct the additional five hundred seventy (570) dwelling units because of existing City development standards. The City's population based park standards are proving to be devastating for the additional dwelling units. For example, by adhering to these park standards, the park development costs add approximately \$7,000.00 to each dwelling unit. Thus, the total development fees for Sunroad will be approximately \$18,000.00.

In comparison, the financial proforma for the Fairfield residential project, currently under construction at San Diego Spectrum, shows total development fees equaling \$10,935.00 per dwelling unit. The additional park fees significantly increase the development fees, including park fees, that Fairfield had to pay. The additional park costs will eliminate the additional dwelling units [up to five hundred seventy (570)]. Currently, nine hundred ninety eight (998) dwelling units have been approved for San Diego Spectrum without mitigation measures being imposed. The additional dwelling units, if forced to mitigate at current City standards cannot compete with the approved nine hundred ninety eight (998) dwelling units. The rents for the additional units would have to be significantly higher, and not achievable.

City's Strategic Framework Plan

Sunroad feels the population based park standards are completely out of sync with the City's efforts to formulate a Strategic Framework Plan. Your staff report points out certain draft Strategic Framework Plan policies that include:

1. "Developing alternative methods of providing park and recreation area for urban and built-out communities in recognition of available land constraints and existing opportunities for the integration of public space with recreation space"
2. "The provision of adequate infrastructure and public facilities is a linchpin for the entire growth strategy. New funding sources, reallocation of existing resources, and adjustments to certain facilities standards are all part of the strategy for accommodating new growth and remedying existing deficiencies"
3. "The Recreation Element of the General Plan should be updated to include a Park Master Plan and to address the role of small parks and plazas in meeting recreation needs".

The millions of dollars being imposed on the additional dwelling units [up to five hundred seventy (570)] are simply out of line with the drafted goals of the Strategic Framework Plan. It is time for this City Council to come to grips with the inconsistencies and direct staff to look at these village

January 24, 2002

Page 3

developments like the downtown Centre City area. Population based park standards are simply not applied to downtown San Diego development.

Planning Commission and Kearny Mesa Planning Group Urge Flexibility

On December 6, 2001, the Planning Commission addressed the issue of the application of the City's population based park standards to the Sunroad project. We have attached excerpts from the Planning Commissioners' discussion on December 6, 2001. They urged Park and Recreation staff to be flexible in applying the City's park standards.

"I agree with everything you say and I'm going to support the motion because of the flexibility that is in there. But I think we're going to find out that these standards are an impediment to what we're trying to do on these urban village concepts and I think we ought to have the flexibility to change the standards or modify them in a way that gets us all the other good things that want to get." Commissioner Schultz

The Kearny Mesa Planning Group ("KMPPG") also urged flexibility in a January 16, 2002 letter to City staff (a copy is attached). "The population Based Park standards need to be updated to differentiate between single family suburban developments and high density 'infill, City of Villages' type developments. The group urges reasonableness and flexibility in creating and applying park standards to this type of development.

The KMPPG also sought park credits for private recreational facilities designed into the high density housing projects like Sunroad is proposing.

San Diego Spectrum Recreation Amenities

Sunroad's architects will be present on January 29, 2002, to demonstrate, not only the open space and recreational amenities being proposed for the Sunroad Centrum project, but for the entire San Diego Spectrum Master Planning Area. In the meantime, we are attaching a comparison of the population based park standards requirements for park facilities against those that are found in the Sunroad Proposal. If a flexible approach to the interpretation of City park standards is utilized, the Sunroad proposal is more than adequate.

Conclusion

In light of the projected housing shortage for the City, this City Council should be providing incentives for high density mixed use "village type" development. To the contrary, the application of City standards like the population based park standards provide nothing more than disincentives for proposed urban infill development. We urge you to direct City staff to find ways to make projects like

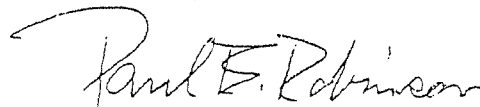
DSD0010891

January 24, 2002
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Sunroad's financially feasible.

We thank you in advance for your favorable consideration.

Sincerely,

A handwritten signature in dark ink, appearing to read "Paul E. Robinson". The signature is fluid and cursive, with a large initial "P" and "R".

Paul E. Robinson

HECHT, SOLBERG, ROBINSON & GOLDBERG LLP

PER/js

cc: Mr. Michael T. Uberuaga, City Manager *[Via Messenger]*
Mr. Bruce Herring, Deputy City Manager *[Via Messenger]*
Mr. Casey Gwinn, City Attorney *[Via Messenger]*
Ms. Gail Goldberg, City Planning Director *[Via Messenger]*
Sunroad Centrum Partners, LP *[Via Facsimile]*

DSD0010892

January 24, 2002
Page 5

bcc: Mr. Tom Story,
Mayor Murphy's Office *[Via Messenger]*
Mr. Mike Westlake *[Via Messenger]*
Mr. John Wilhoit *[Via Messenger]*

DSD0010893

Exhibit 9

HECHT
SOLBERG
ROBINSON
■ GOLDBERG
LLP

PAUL E. ROBINSON
ATTORNEY AT LAW

January 25, 2002

Personal Delivery

Mayor Dick Murphy
and City Councilmembers
City of San Diego
202 C Street, 10th and 11th Floors
San Diego, California 92101

Re: City Council Docket of January 29, 2002, Item No. 330, Development Agreement
Between City of San Diego and Sunroad Centrum Partners, LP, Successor In
Interest to General Dynamics Properties, Inc.

Dear Mayor Murphy and City Councilmembers:

We are enclosing Attachment Three to a January 24, 2002, letter, regarding the above-referenced matter, that we delivered to you on said date. We inadvertently attached an out of date Attachment Three. Please remove that attachment from the letter and substitute the enclosed Attachment Three.

We are sorry for any inconvenience that this may have caused you.

Sincerely,



Paul E. Robinson

HECHT, SOLBERG, ROBINSON & GOLDBERG LLP

PER/js
Enclosure

cc: Mr. Michael T. Uberuaga, City Manager *[Via Messenger]*
Mr. Bruce Herring, Deputy City Manager *[Via Messenger]*
Mr. Casey Gwinn, City Attorney *[Via Messenger]*
Ms. Gail Goldberg, City Planning Director *[Via Messenger]*
Sunroad Centrum Partners, LP *[Via Facsimile]*

ATTORNEYS AT LAW 600 WEST BROADWAY, EIGHTH FLOOR SAN DIEGO, CALIFORNIA 92101 TELEPHONE 619.239.3444 FACSIMILE 619.232.6828

DSD0010899

January 25, 2002
Page 2

bcc: Mr. Tom Story,
Mayor Murphy's Office *[Via Messenger]*
Mr. Mike Westlake *[Via Messenger]*
Mr. John Wilhoit *[Via Messenger]*

DSD0010900

Exhibit 10

THE CITY OF SAN DIEGO, CALIFORNIA
MINUTES FOR REGULAR COUNCIL MEETING
OF
TUESDAY, NOVEMBER 12, 2002
AT 9:00 A.M.
IN THE COUNCIL CHAMBERS - 12TH FLOOR

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(1) The map substantially conforms to the approved tentative map, and any approved alterations thereof and any conditions of approval imposed with said tentative map.

(2) The map complies with the provisions of the Subdivision Map Act and any local ordinances applicable at the time of approval of the tentative map.

(3) The map is technically correct.

Said map will be finalized and recorded unless a valid appeal is filed. Interested parties will have 10 calendar days from the date of this Council hearing to appeal the above findings of the City Engineer to the City Council. A valid appeal must be filed with the City Clerk no later than 2:00 p.m., 10 calendar days from the date of this notice stating briefly which of the above findings made by the City Engineer was improper or incorrect and the basis for that conclusion. If you have questions about the approval findings or need additional information about the map or your appeal rights, please feel free to contact Deputy City Engineer Lee Hennes at (619) 446-5291.

ITEM-330: Sunroad at San Diego Spectrum.

Matter of approving, conditionally approving, modifying, or denying a request to amend the Progress Guide and General Plan, Kearny Mesa Community Plan, and New Century Center Master Plan, Development Standards, and Design Manual, a rezone, and a Development Agreement Amendment to allow Sunroad Centrum Partners, L.P., to construct an additional 570 dwelling units within the San Diego Spectrum project, on Planning Areas 1A, 1B, 2B, and/or 3A (998 dwelling units are currently approved at San Diego Spectrum). Sunroad's property within San Diego Spectrum (formerly General Dynamics) is located in the community of Kearny Mesa east of Kearny Villa Road, south of Lightwave Avenue, west of Paramount Drive, and north of Spectrum Center Boulevard.

(See City Manager's Report CMR-02-257. PG&GP/Kearny Mesa Community Plan/New Century Center Master Plan/Development Standards/ Design Manual/RZ/Development Agreement Amendment/41-0101. Kearny Mesa Community Plan Area. District-6.)

CITY MANAGER'S RECOMMENDATION:

Adopt the resolutions in subitems A and B; and introduce the ordinances in subitems C and D:

Subitem-A: (R-2003-142) ADOPTED AS RESOLUTION R-297294

Adoption of a Resolution certifying that the information contained in Environmental Mitigated Negative Declaration LDR-41-0101 has been completed in compliance with the California Environmental Quality Act of 1970 (California Public Resources Code section 21000 et seq.), as amended, and the State guidelines thereto (California Code of Regulations section 15000 et seq.), that the declaration reflects the independent judgment of the City of San Diego as Lead Agency and that the information contained in the report, together with any comments received during the public review process, has been reviewed and considered by this Council in connection with the approval of Sunroad at San Diego Spectrum;

That the City Council finds that project revisions now mitigate potentially significant effects on the environment previously identified in the Initial Study and therefore, that the Mitigated Negative Declaration is approved;

That pursuant to California Public Resources Code section 21081.6, the City Council adopts the Mitigation Monitoring and Reporting Program, or alterations to implement the changes to the project as required by this body in order to mitigate or avoid significant effects on the environment;

That the City Clerk is directed to file a Notice of Determination [NOD] with the Clerk of the Board of Supervisors for the County of San Diego regarding the above project.

Subitem-B: (R-2003-143) ADOPTED AS RESOLUTION R-297295

Adoption of a Resolution amending the Kearny Mesa Plan Area Community Plan contingent upon recordation of the amendment to development agreement with Sunroad Centrum Partners, L.P., LNR and other property owners, with the office of the County Recorder;

That the Council adopts an amendment to the Progress Guide and General Plan for the City of San Diego to incorporate the above amended plan.

Subitem-C: (O-2003-43) INTRODUCED AS AMENDED, TO BE ADOPTED ON
MONDAY, NOVEMBER 25, 2002

Introduction of an Ordinance authorizing the City Manager to execute an amendment to a development agreement with Sunroad Centrum Partners, L.P.
ITEM-330: (Continued)

Subitem-D: (O-2003-35) INTRODUCED, TO BE ADOPTED ON
MONDAY, NOVEMBER 25, 2002

Introduction of an Ordinance changing 8.2 acres of the San Diego Spectrum project site (formerly known as the Kearny Mesa General Dynamics property) located within the Kearny Mesa Community Plan area, in the City of San Diego, California, from the M-1B zone into the CA zone, as defined by San Diego Municipal Code section 101.0428; and repealing Ordinance No. 12342 (New Series), adopted May 31, 1978, of the ordinances of the City of San Diego insofar as the same conflicts herewith.

OTHER RECOMMENDATIONS:

Planning Commission on June 13, 2002, voted 5 - 0 to approve staff's recommendations with the following modifications:

Affordable housing requirements be increased from 10% to 20% on the 570 additional units.

Parks should be developed in closer proximity to housing.

Add criteria to the site design guidelines to strengthen, rather than just to encourage mixing, that single use areas, in particular those that are auto-oriented, are strongly discouraged unless incorporated as part of a vertically mixed use development; no opposition.

Ayes: Schultz, Garcia, Lettieri, Brown, Chase
Not present: Anderson, Steele

The Kearny Mesa Community Planning Group on April 17, 2002, voted (13-0-1) to recommend approval of this project.

CITY MANAGER SUPPORTING INFORMATION:

The project area is located within the northwestern portion of the New Century Center Master Plan Area of the Kearny Mesa Community Planning Area. ITEM-330: (Continued)

FISCAL IMPACT:

All costs associated with the processing of this project are paid from a deposit account maintained by the applicant. The Extraordinary Benefits required through the original General Dynamics Development Agreement will continue to be assured through the amended Development Agreement.

Ewell/Christiansen/MJW

LEGAL DESCRIPTION:

The project area is located within the northwestern portion of the New Century Center Master Plan Area of the Kearny Mesa Community Planning Area.

FILE LOCATION: LAND - Progress Guide and General Plan/Kearny Mesa Community - Sunroad at San Diego Spectrum (09)

COUNCIL ACTION: (Time duration: 2:20 p.m. - 3:23 p.m.)

Testimony in favor by Paul Robinson and Aaron Feldman.

MOTION BY FRYE TO ADOPT THE RESOLUTIONS AND INTRODUCE THE ORDINANCES WITH THE FOLLOWING AMENDMENTS: PRIOR TO THE ISSUANCE OF THE FIRST BUILDING PERMIT FOR SUNROAD'S 570 ADDITIONAL RESIDENTIAL UNITS WITHIN THE NEW CENTURY CENTER MASTER PLAN AREA, THE OWNER/PERMITTEE SHALL MEET, OR ASSURE THROUGH AGREEMENT OR BOND, THE FOLLOWING MITIGATION OPTIONS:

1. THE DEVELOPER SHALL PROVIDE 3.42 CONTIGUOUS, USABLE ACRES OF LAND WITHIN THEIR DEVELOPMENT FOR PARK AND RECREATION PURPOSES, AND PROVIDE FUNDING FOR THE DESIGN AND CONSTRUCTION OF THE REQUIRED PUBLIC RECREATIONAL FACILITIES ON THE PROVIDED ACREAGE PLUS THEIR PRO RATA

SHARE OF THE COST OF CONSTRUCTING A 15,000 SQUARE-FOOT
RECREATION BUILDING AND SWIMMING POOL; OR

2. THE DEVELOPER SHALL PROVIDE A MINIMUM OF 2.0 CONTIGUOUS,
USABLE ACRES OF LAND WITHIN THEIR DEVELOPMENT IN A
CONFIGURATION TO SUPPORT ACTIVE RECREATIONAL
PROGRAMMING, PROVIDE THE FUNDING FOR THE DESIGN AND
CONSTRUCTION OF THE REQUIRED PUBLIC RECREATION FACILITIES
ON THE PROVIDED ACREAGE PLUS THEIR PRO-RATA SHARE OF THE
COST OF CONSTRUCTING A 15,000 SQUARE-FOOT RECREATION
BUILDING AND SWIMMING POOL, AND MEET THE FOLLOWING:
 - A. PROVIDE THE REMAINDER OF THE REQUIRED 3.42
ACRES WITHIN THEIR DEVELOPMENT AS CONTIGUOUS,
USABLE LAND.

Second by Atkins. Passed by the following vote: Peters-yea, Wear-yea,
Atkins-yea, Stevens-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-yea,
Mayor Murphy-yea.

ITEM-331: Changing the Name of a Portion of Churchward Street to Brooks Huffman Plaza.

(Encanto Neighborhoods Community Planning Area. District-4.)

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2003-569) ADOPTED AS RESOLUTION R-297282

Approving the street name change of a portion of Churchward Street to Brooks
Huffman Plaza;

Authorizing the expenditure of funds from Council District 4 discretionary funds
for the amount of \$2,500.

(R-2003-142)

RESOLUTION NUMBER R-297294

ADOPTED ON NOVEMBER 12, 2002

WHEREAS, on April 27, 2001, Sunroad Centrum Partners submitted an application to the City of San Diego for amendments to the Progress Guide and General Plan, Kearny Mesa Community Plan, New Century Center Master Plan, Development Standards and Design Manual, and amendment to the existing Development Agreement, and a rezone, LDR No. 41-0101; and

WHEREAS, the matter was set for a public hearing to be conducted by the Council of the City of San Diego; and

WHEREAS, the issue was heard by the City Council on November 12, 2002; and

WHEREAS, the City Council considered the issues discussed in Mitigated Negative Declaration LDR No. 41-0101; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that it is certified that Mitigated Negative Declaration LDR No. 41-0101, on file in the office of the City Clerk, has been completed in compliance with the California Environmental Quality Act of 1970 (California Public Resources Code section 21000 et seq.), as amended, and the State guidelines thereto (California Code of Regulations section 15000 et seq.), that the declaration reflects the independent judgment of the City of San Diego as Lead Agency and that the information contained in the report, together with any comments received during the public review process, has been reviewed and considered by this Council in connection with the approval of Sunroad at San Diego Spectrum .

BE IT FURTHER RESOLVED, that the City Council finds that project revisions now mitigate potentially significant effects on the environment previously identified in the Initial Study and therefore, that the Mitigated Negative Declaration, a copy of which is on file in the office of the City Clerk and incorporated by reference, is approved.

BE IT FURTHER RESOLVED, that pursuant to California Public Resources Code section 21081.6, the City Council adopts the Mitigation Monitoring and Reporting Program, or alterations to implement the changes to the project as required by this body in order to mitigate or avoid significant effects on the environment, a copy of which is attached hereto and incorporated herein by reference.

BE IT FURTHER RESOLVED, that the City Clerk is directed to file a Notice of Determination [NOD] with the Clerk of the Board of Supervisors for the County of San Diego regarding the above project.

APPROVED: CASEY GWINN, City Attorney

By _____
Mary Jo Lanzafame
Deputy City Attorney

MJL:pev
7/15/02
Or.Dept:DSD
R-2003-142
Form=mndr.frm

Exhibit 11

THE CITY OF SAN DIEGO, CALIFORNIA
MINUTES FOR REGULAR COUNCIL MEETING
OF
TUESDAY, FEBRUARY 10, 2004
AT 9:00 A.M.
IN THE COUNCIL CHAMBERS - 12TH FLOOR

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COUNCIL COMMENT:

COUNCIL COMMENT-1:

Comment by Mayor Murphy wishing to acknowledge the generous offer of Sunroad Enterprises, and announced that on February 5, 2004, the leadership of Sunroad made a public announcement that they were going to donate \$1,000,000 over the next five years to the San Diego Regional Fire and Rescue Helicopter program to help purchase and operate a helicopter to serve the entire region.

Mayor Murphy wished to add that this year will be the 7th annual Blood Drive and that the Municipal Employees Association set their goal at 500 pints of blood, and hopes to meet and exceed that due to the severe shortage in San Diego. Mayor Murphy noted that all City employees are given leave time to go and donate blood. Yesterday, the blood drive was in the City Administration Building; today it is in the Mission Valley library; on Wednesday it will be at the World Trade Center and the Police Headquarters; Thursday at Balboa Park; and Friday at Ridgehaven Auditorium. Mayor Murphy extended his thanks to the San Diego Municipal Employees Association for making the effort to show people that they not only care about the job they do in serving the public, but they go above and beyond that in terms of public service.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 2:14 p.m. – 2:17 p.m.; 2:21 p.m. 2:22 p.m.)

COUNCIL COMMENT-2:

Comment by Deputy Mayor Atkins regarding that on Saturday night she was able to attend on behalf of the Mayor, San Diego's 16th annual "Learners Recognition Dinner and Awards Ceremony." Deputy Mayor Atkins announced that there have been 1,041 "Learners" that have participated in the program last year alone to help adults learn to read.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 2:19 p.m. – 2:21 p.m.)

RESOLUTION NUMBER R-296026

ADOPTED ON JANUARY 29, 2002

WHEREAS, Council Policy 600-37 requires the Planning Commission to recommend and the City Council to determine whether a development agreement amendment is warranted for proposed development before a development agreement amendment application may be accepted by the City Manager for processing; and

WHEREAS, Sunroad Centrum Partners, L.P. [Applicant], is proposing to amend the existing General Dynamics Development Agreement to allow for additional residential development of its property located within the San Diego Spectrum project. Sunroad's property within the San Diego Spectrum project [Project] is located east of Kearny Villa Road, south of Lightwave Avenue, west of Paramount Drive and north of Spectrum Center Boulevard, and is legally described as Parcels 1 and 2 of Parcel Map 18572; and

WHEREAS, on December 6, 2001, by Planning Commission Resolution No. 3210-PC, the Planning Commission of the City of San Diego [Commission] provided direction to City staff regarding the application of population-based park requirements for the Sunroad at San Diego Spectrum Project [Project]; and

WHEREAS, the Commission recommended that the existing population-based park standards be maintained, but that they be applied in a more flexible and creative manner. Park credit should be considered for different types of open space including on-site pocket parks,

linear park areas, swimming pools, and portions of Missile Park not developed by the YMCA and open to the public for park purposes; and

WHEREAS, the Commission emphasized the need to provide useable park land, to be free and open to the public at all times. On-site park land should provide convenient access to future residents at San Diego Spectrum; and

WHEREAS, on December 6, 2001, by Planning Commission Resolution No. 3210-PC, the Planning Commission made an initial determination that a development agreement amendment for the Project was warranted and recommended that the Council of the City of San Diego direct staff to accept the application for a development agreement amendment on the Project and to negotiate a development agreement consistent with Council Policy 600-37; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the City Manager is authorized to initiate an amendment to the General Dynamics Development Agreement.

APPROVED: CASEY GWINN, City Attorney

By _____
Mary Jo Lanzafame
Deputy City Attorney

MJL:lc:pev
01/15/02
Or.Dept:Dev.Svcs.
R-2002-925
Form=r-t.frm

Exhibit 12



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[Events](#)

[Contact Us](#)

[Sign Up](#)

Welcome

In February, Sunroad Enterprises kicked off its 5-year commitment to raise \$1 million for San Diego's Regional Fire and Rescue Helicopter Program. Over the next five years, for every car sold at **Toyota Chula Vista, Pacific Honda Kearny Mesa Ford, Scion Chula Vista, Kearny Mesa Infiniti, Kearny Mesa Subaru, Kearny Mesa Hyundai, Kearny Mesa Kia** and **Toyota California**, every boat slip rented at **Sunroad Resort Marina** and every round of golf sold at **Maderas Golf Club**, Sunroad will make a donation to the fund.

If you're in the market for a vehicle, a boat slip or just a round of golf, you can help give back to our community by choosing to do business with Sunroad Enterprises. Together, we can ensure our great firefighters have the tools they need to do their job.



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Exhibit 13

1001
Agenda

CITY OF SAN DIEGO
M E M O R A N D U M

DATE: January 23, 2006

TO: Elizabeth Maland, City Clerk

FROM: *CP* Lee Hennes, Deputy City Engineer

SUBJECT: Approval of the final map "Sunroad B - Promenade"

The City Engineer has examined and states that he can make the necessary findings to approve the final map "Sunroad B - Promenade". Pursuant to Section 125.0630 M.C., please place the following notice as an information item in the Council Docket for February 6, 2006.

NOTICE of Pending Final Map Approval

Notice is hereby given that the City Engineer has reviewed and will approve on the date of this City Council meeting that certain final map entitled "Sunroad B - Promenade" (T.M. No. 421444 PTS No. 7081) located on the southwest corner of Paramount Drive and Lightwave Avenue in the Kearny Mesa Community Plan area in Council District 6, a copy of which is available for public viewing at the office of the San Diego City Clerk. Specifically, the City Engineer has caused the map to be examined and has made the following findings:

- (1) The map substantially conforms to the approved tentative map, and any approved alterations thereof and any conditions of approval imposed with said tentative map.
- (2) The map complies with the provisions of the Subdivision Map Act and any local ordinances applicable at the time of approval of the tentative map.
- (3) The map is technically correct.

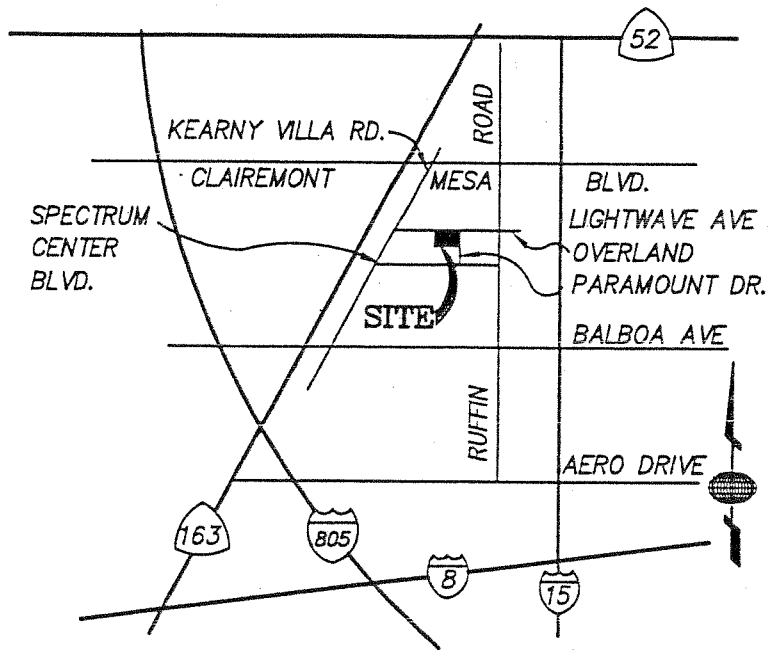
Said map will be finalized and recorded unless a valid appeal is filed. Interested parties will have 10 calendar days from the date of this Council hearing to appeal the above findings of the City Engineer to the City Council. A valid appeal must be filed with the City Clerk no later than 2:00 PM, 10 calendar days from the date of this City Council meeting stating briefly which of the above findings made by the City Engineer was improper or incorrect and the basis for that conclusion. If you have questions about the map approval findings or need additional information about the map or your appeal rights, please feel free to contact Deputy City Engineer Lee Hennes at (619) 446-5291.

cc: W.O. 421444 PTS 7081

Attachments: Vicinity map, reduced copy of map

SUNROAD B - PROMENADE

FINAL MAP



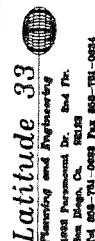
VICINITY MAP

NO SCALE

W.O.#421444 PTS #7081

SLEEK 5 OF 5 SHEETS

PROCEDURE OF SURVEY



NOTES:

1. TOTAL NUMBER OF LOTS : 1
2. TOTAL AREA WITHIN MAP BOUNDARY : 0.337 ACRES
3. THIS MAP WAS COMPILED FROM RECORD DATA PER PARCEL MAP NO. 100779

100

| | | |
|----------------|--------------|--------|
| EQ. NO. 421444 | LD. NO. NONE | LC 248 |
|----------------|--------------|--------|

AT STATION 144 MAPPING ANGLE = -079°16.02'
GROUND DIST. = GRID DIST. DERIVED BY CSF 0.999

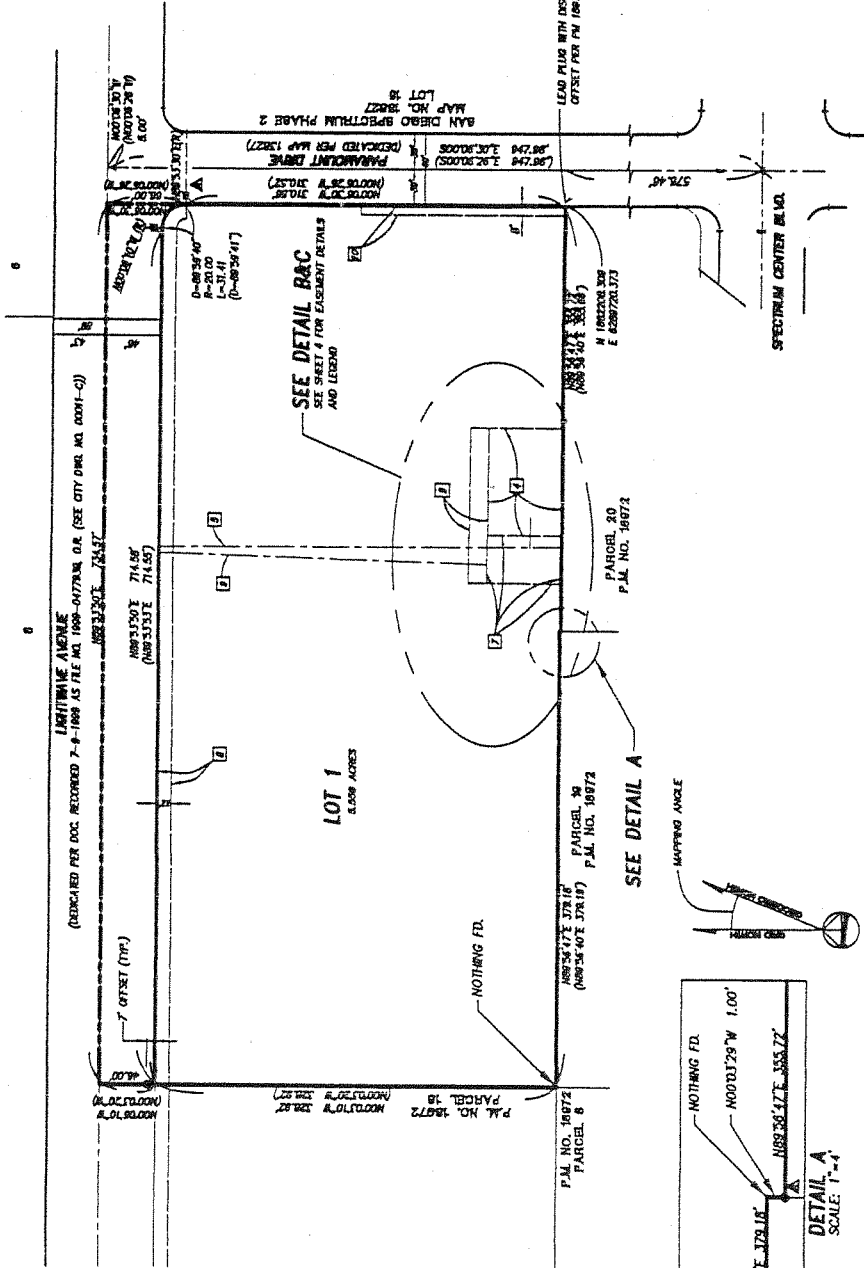
06P08-965\AD\PH\965\005\H\M\JTM\965
138 H3 E65021 9006/1/19/2006

MAP NO.

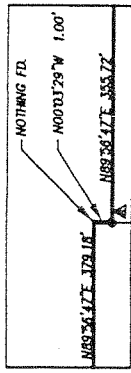
SHEET 3 OF 5 SHEETS

SUNROAD B - PROMENADE

KEARNY MESA COMPLEX
MAP NO. 7144



AT STATION 144 MAPPING ANGLE = -079°16'02"
GROUND DIST. = GROUND DIST. DIVIDED BY CSF 0.9998783540



DETAIL A
SCALE: 1"=4'



Latitude 33
Planning and Engineering
6000 Perimeter Dr.
Suite 100
Tomball, TX 77375
Tel: 281-358-0000 Fax: 281-358-0004

08/10/2011/11:50AM/33646/PH-336-0000 1/19/2006 12:05:53 PM PST

| | | |
|----------------------|---------------|-------------------|
| E.O. NO. 12812 | LA. NO. 18672 | L.C. 342-1728 |
| TM. WORKER NO. 18672 | | NO. 83 18672-1728 |

MAP NO.

SUNROAD B - PROMENADE

SHEET 4 OF 5 SHEETS

EASEMENT LEGEND

- 1 NOT USED
- 2 NOT USED
- 3 NOT USED
- 4
- 5
- 6 NOT USED
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15

INDICATES EASEMENT TO SAN DIEGO GAS AND ELECTRIC CO. PER DOCUMENT RECORDED 4-28-1982 AS FILE NO. 82-046414, O.R.

INDICATES EASEMENT TO SAN DIEGO GAS AND ELECTRIC CO. PER DOCUMENT RECORDED 8-28-1982 AS FILE NO. 82-046414, O.R.

INDICATES EASEMENT TO SAN DIEGO GAS AND ELECTRIC CO. PER DOCUMENT RECORDED 3-8-1988 AS FILE NO. 88-081814, O.R.

INDICATES EASEMENT TO SAN DIEGO GAS AND ELECTRIC CO. PER DOCUMENT RECORDED 1-24-2000 AS FILE NO. 2000-003064, O.R.

INDICATES EASEMENT TO SAN DIEGO GAS AND ELECTRIC CO. PER DOCUMENT RECORDED 4-13-2000 AS FILE NO. 2000-018714, O.R.

INDICATES EASEMENT TO SAN DIEGO GAS AND ELECTRIC CO. PER DOCUMENT RECORDED 8-16-2004 AS FILE NO. 2004-077914, O.R.

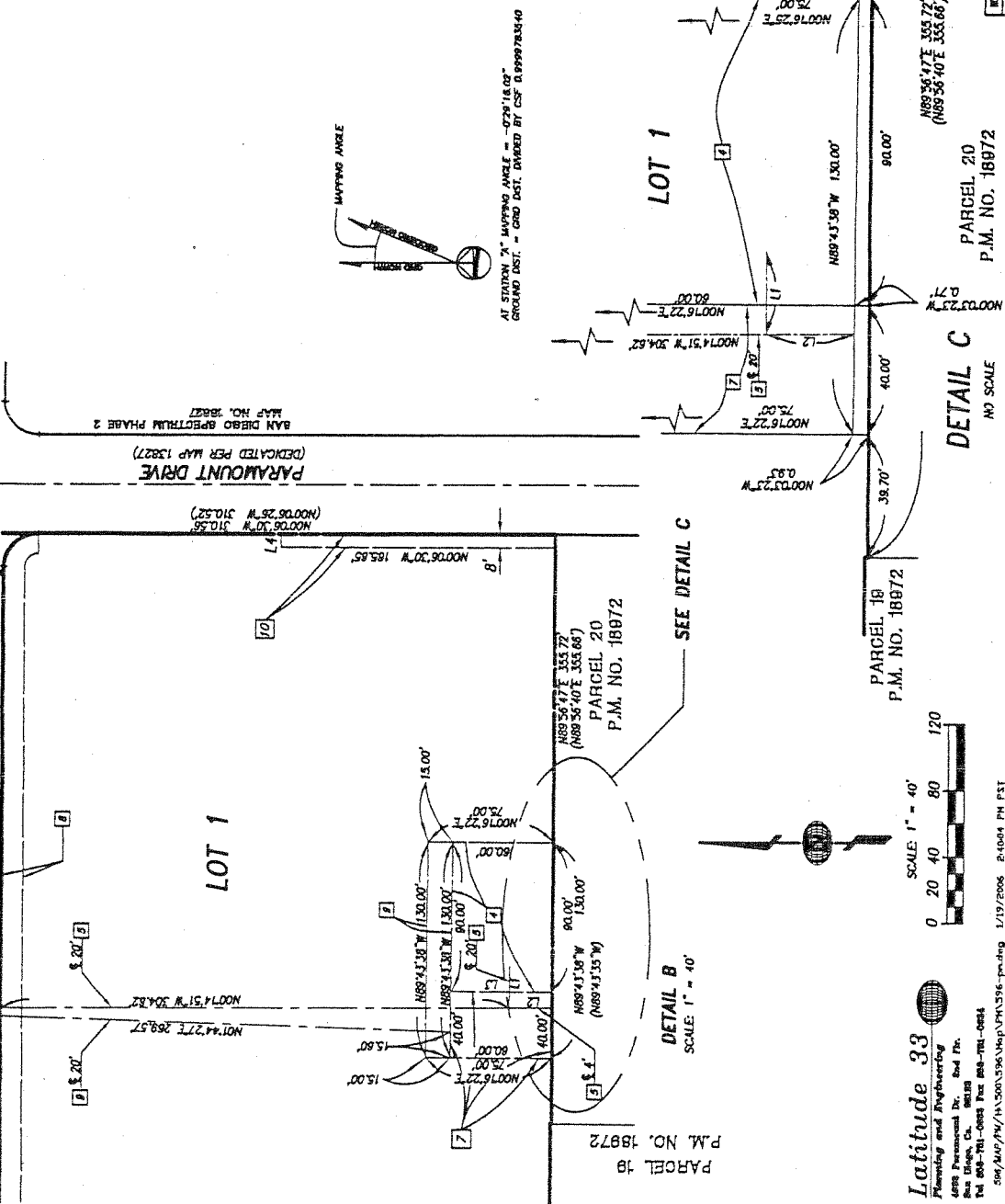
INDICATES EASEMENT TO GENERAL DYNAMICS PROPERTIES, INC. PER DOCUMENT RECORDED 7-31-1998 AS FILE NO. 1998-040714, O.R. AND AMENDED 11-8-1999 AS FILE NO. 1999-742504, O.R. (NOT FLOUTABLE)

INDICATES EASEMENT TO SAN DIEGO SPECTRUM OWNERS ASSOCIATION PER DOCUMENT RECORDED 11-28-2000 AS FILE NO. 2000-044412, O.R. (NOT FLOUTABLE)

INDICATES EASEMENT TO SAN DIEGO GAS AND ELECTRIC CO. PER DOCUMENT RECORDED 10-12-2001 AS FILE NO. 2001-073604, O.R. (NOT FLOUTABLE)

INDICATES EASEMENT TO THE BURNER DISPERIMENT-4000W/AS RESUSE PARTNERSHIP PER DOCUMENT RECORDED 10-7-2003 AS FILE NO. 2003-132057, O.R. (NOT FLOUTABLE)

INDICATES EASEMENT TO SAN DIEGO GAS AND ELECTRIC CO. PER DOCUMENT RECORDED 1-28-2003 AS FILE NO. 2003-000111, O.R. (NOT FLOUTABLE)



| LINE | BEARING | LENGTH |
|------|--------------|--------|
| 11 | N89°35'30"W | 24.00' |
| 12 | N007°15'17"W | 24.00' |
| 13 | N007°15'17"W | 24.00' |
| 14 | N007°15'17"W | 24.00' |

| | | |
|---------------------|---------------|-----------------|
| W.D. NO. 211441 | I.A. NO. NONE | I.C. 113-1728 |
| I.A. NUMBER NO. 804 | | NO. 83 1882-578 |

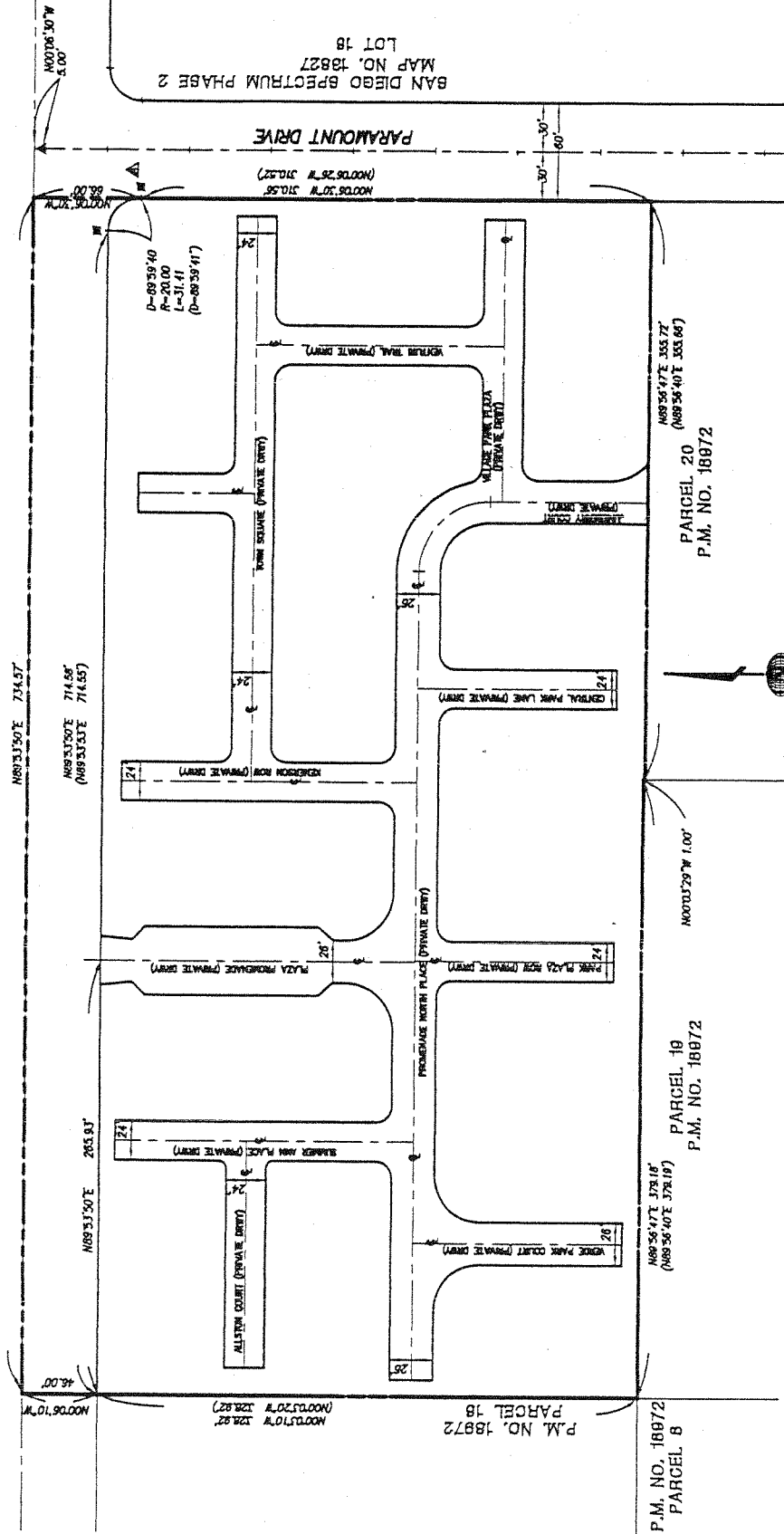
MAP NO.

SUNROAD B - PROMENADE

PRIVATE DRIVEWAY - NON TITLE SHEET

SHEET 5 OF 5 SHEETS

LIGHTWAVE AVENUE

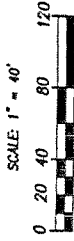


THE RESPONSIBILITY FOR MAINTENANCE OF ALL PRIVATE DRIVEWAYS
SHOWN ON THIS MAP SHALL REMAIN WITH THE PRIVATE DRIVEWAY
OWNER. THE CITY OF SAN DIEGO AND THE ENGINEER SHALL NOT BE
CONSIDERED TO ASSUME ANY MAINTENANCE RESPONSIBILITY TO THE CITY
OR TO ANY OTHER PARTY. THE ENGINEER'S RESPONSIBILITY IS LIMITED TO
CONSTRUCTING TO ORDER ANY RIGHTS TO THE GENERAL PUBLIC.

Latitude 33

Planning and Engineering
4600 Pennsylvania Dr. Ste. 100
San Diego, CA 92121
Tel 619-761-0888 Fax 619-761-0884

504/400/PA/14/2001/354 Map/PA/354 pending 1/19/2006 2:4004 PM PST



| | | | | | |
|---------------|--------|---------|-----------|----|----------|
| NO. MAP | 471444 | LA. NO. | INDEX | LC | 242-1728 |
| LA. WATER NO. | 8384 | NO. 83 | 1897-5789 | | |

Exhibit 14

THE CITY OF SAN DIEGO, CALIFORNIA
MINUTES FOR REGULAR COUNCIL MEETING
OF
MONDAY, FEBRUARY 6, 2006
AT 2:00 P.M.
IN THE COUNCIL CHAMBERS - 12TH FLOOR

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| | | | |
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| Wednesday | 1/25/2006 | 132 | Rules Committee review |
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| Monday | 2/06/2006 | 120 | Council adopts propositions for ballot; directs City Attorney to prepare ordinances |
| Monday | 2/27/2006 | 99 | Council adopts ordinances prepared by City Attorney |
| Friday | 3/10/2006 | 88 | Last day for City Clerk to file with Registrar of Voters all elections material |
| Thursday | 3/23/2006 | 75 | Last day to file ballot arguments with City Clerk |

If you have questions, please contact the Office of the City Clerk at (619) 533-4050.

ITEM-251: **Notice of Pending Final Map Approval – Sunroad B - Promenade.**

Notice is hereby given that the City Engineer has reviewed and will approve on this day the subdivision of land shown on that certain final map entitled “Sunroad B - Promenade” (T.M. No. 421444/PTS No. 7081), located on the southwest corner of Paramount Drive and Lightwave Avenue in the Kearny Mesa Community Plan Area in Council District 6, a copy of which is available for public viewing at the Office of the San Diego City Clerk. Specifically, the City Engineer has caused the map to be examined and has made the following findings:

- (1) The map substantially conforms to the approved tentative map, and any approved alterations thereof and any conditions of approval imposed with said tentative map.
- (2) The map complies with the provisions of the Subdivision Map Act and any local ordinances applicable at the time of approval of the tentative map.
- (3) The map is technically correct.

Said map will be finalized and recorded unless a valid appeal is filed. Interested parties will have 10 calendar days from the date of this Council hearing to appeal the above findings of the City Engineer to the City Council. A valid appeal must be filed with the City Clerk no later than 2:00 p.m., 10 calendar days from the date of this Notice stating briefly which of the above findings made by the City Engineer was improper or incorrect and the basis for that conclusion. If you have questions about the approval findings or need additional information about the map or your appeal rights, please feel free to contact Deputy City Engineer Lee Hennes at (619) 446-5291.

ITEM-252: **Notice of Pending Final Map Approval – 4666 Mission Boulevard.**

Notice is hereby given that the City Engineer has reviewed and will approve on this day the subdivision of land shown on that certain final map entitled “4666 Mission Boulevard” (T.M. No. 42-0934/PTS No. 57724), located southwesterly of Diamond Street and Mission Boulevard in the Pacific Beach Community Plan Area in Council District 2, a copy of which is available for public viewing at the Office of the San Diego City Clerk. Specifically, the City Engineer has caused the map to be examined and has made the following findings:

- (1) The map substantially conforms to the approved tentative map, and any approved alterations thereof and any conditions of approval imposed with said tentative map.
- (2) The map complies with the provisions of the Subdivision Map Act and any local ordinances applicable at the time of approval of the tentative map.
- (3) The map is technically correct.

Said map will be finalized and recorded unless a valid appeal is filed. Interested parties will have 10 calendar days from the date of this Council hearing to appeal the above findings of the City Engineer to the City Council. A valid appeal must be filed with the City Clerk no later than 2:00 p.m., 10 calendar days from the date of this Notice stating briefly which of the above findings made by the City Engineer was improper or incorrect and the basis for that conclusion. If you have questions about the approval findings or need additional information about the map or your appeal rights, please feel free to contact Deputy City Engineer Lee Hennes at (619) 446-5291.

Exhibit 15

Tom-

Dan just stepped out- but he asked John Cruz this question and I believe that answer was no- they did not find it necessary to make a CLUP determination. So you may want to dig into the question of why they decided this....

Darrel D. Fullbright AIA
Principal
BPA Architecture Planning Interiors
4435 Eastgate Mall, Suite 100
San Diego, CA 92121
PH: 858-453-1200 extension 104
FAX: 858-453-1913

Visit our website at www.bpa-arch.com

----- Original Message -----

From: Tom Story

To: Dan Munch ; Dan Feldman ; Craig Bachmann

Cc: bpaul@bpa-arch.com ; Darrel Fullbright

Sent: Monday, April 03, 2006 1:36 PM

Subject: RE: Centrum, FAA Obstruction Evaluation

Dan,
That isn't the question I wanted you to ask. Did you ask the question I suggested earlier, i.e. a CLUP consistency determination? Pls find out.

From: Dan Munch [<mailto:dmunch@bpa-arch.com>]

Sent: Monday, April 03, 2006 1:20 PM

To: Dan Feldman; Tom Story; Craig Bachmann

Cc: bpaul@bpa-arch.com; 'Darrel Fullbright'

Subject: Centrum, FAA Obstruction Evaluation

All-

I spoke with John Cruz this morning and asked him if Centrum was reviewed and approved by the airport authority or FAA. Apparently, no such review took place. In speaking with Jeannette Temple briefly, he stated that if such a review was necessary, they would have caught it soon after we submitted. He didn't know why the FAA would be getting involved this late in the game, and requested I try to find out what triggered their review.

I then spoke with Karen McDonald with the FAA Obstruction Evaluation Dept. She explained that this process started a couple weeks ago when a letter from a "concerned citizen" crossed her desk, inquiring as to whether the project they read about in the newspaper had been reviewed for its impact on the circling procedures for Montgomery. She was going to ignore the letter, but later received a phone call from someone higher up at the FAA again asking if an evaluation had been done.

So even though the building doesn't meet the standard criteria triggering FAA review, they have requested we submit the project so that they can issue an official "airspace determination" in order to appease Joe Citizen. Karen directed me to their website where I've since submitted the project data for their review:

<https://www.oasaa.faa.gov/oasaaEXT/portal.jsp>

On the site, you'll see the standard criteria triggering FAA review, the main one being any building over 200ft. Centrum12 is 180ft.

Normally these reviews take 30 days, but Karen is willing to help us expedite this one in about half that time. Once the various departments review the project, they will determine if mitigating measures must be taken (i.e. beacon lights). In rare cases, they have required the building be lowered, but she couldn't conjecture on this until the obstruction evaluation was conducted.

As I said, the project has been submitted, and I will continue to follow up on their progress. We have also submitted Centrum14, since it will be over the 200ft mentioned above.

Dan Munch
Project Architect
BPA Architecture Planning Interiors
1435 Eastgate Mall, Suite 100
San Diego, CA 92121
PH: 658-453-1200 ext. 126
FAX: 658-453-1913

Visit our website at www.bpa-arch.com

Dan Munch

From: Tom Story [tstory@sunroadenterprises.com]
Sent: Thursday, April 06, 2006 2:40 PM
To: Dan Munch; Darrel Fullbright; Dan Feldman; Craig Bachmann
Cc: bpaul@bpa-arch.com
Subject: RE: Centrum, FAA Obstruction Evaluation

Thx for the update

From: Dan Munch [mailto:dmunch@bpa-arch.com]
Sent: Thursday, April 06, 2006 10:39 AM
To: Tom Story; 'Darrel Fullbright'; Dan Feldman; Craig Bachmann
Cc: bpaul@bpa-arch.com
Subject: RE: Centrum, FAA Obstruction Evaluation

All-

John Cruz left a voicemail this morning stating that he discussed the CLUP issue with the planner, Peter Chou, who confirmed that the project is not in an area requiring CLUP review.

Regarding the FAA obstacle review, I've confirmed that they received the project information and their review is in progress. I'll follow up with Karen weekly to get a status update and report back when I hear more.

Dan

From: Tom Story [mailto:tstory@sunroadenterprises.com]
Sent: Monday, April 03, 2006 5:09 PM
To: Dan Munch; Darrel Fullbright; Dan Feldman; Craig Bachmann
Cc: bpaul@bpa-arch.com
Subject: RE: Centrum, FAA Obstruction Evaluation

Was that because we are outside of any CLUP zone and as such are consistent with the CLUP since we are not within it?

From: Dan Munch [mailto:dmunch@bpa-arch.com]
Sent: Monday, April 03, 2006 2:41 PM
To: 'Darrel Fullbright'; Tom Story; Dan Feldman; Craig Bachmann
Cc: bpaul@bpa-arch.com
Subject: RE: Centrum, FAA Obstruction Evaluation

Tom,

That was in fact my understanding from John.

Dan

From: Darrel Fullbright [mailto:ddf2@bpa-arch.com]
Sent: Monday, April 03, 2006 1:50 PM
To: Tom Story; Dan Munch; Dan Feldman; Craig Bachmann
Cc: bpaul@bpa-arch.com
Subject: Re: Centrum, FAA Obstruction Evaluation

Exhibit 16

From: <Karen.McDonald@faa.gov>
To: dmunch@bpa-arch.com; cbachmann@sunroadenterprises.com
CC: Bruce.Bead@faa.gov; James.Machado@faa.gov; kevin.haggerty@faa.gov; Broughton, Kelly; Galloway, Tait; eric.nelson@sdcounty.ca.gov
Date: 6/20/2006 11:34:53 AM
Subject: 2006-AWP-1638-OE

Dear Mr. Bachmann,

This email is a follow-up to our telephone conversations regarding the notice submitted on your behalf to the Federal Aviation Administration (FAA) on April 5, 2006, for a 180-foot building sited approximately 3,200 feet north of the main runway at the public-use Montgomery Field landing area in San Diego.

As you are now aware, our office issued a Presumed Hazard letter, dated April 24, 2006, for this proposal because of the structure's height having an adverse impact on the published circling instrument flight procedures utilized at Montgomery Field. Our letter advised that the maximum acceptable height of the structure at this site is 160 feet above the ground. The letter gives 60 days for resolution of the issue.

Subsequent to the issuance of our letter, it has come to the attention of the FAA that this building is under construction. After the 60 days has elapsed from April 24, 2006, with no resolution of the issue, our office will be in a position to issue a Determination of Hazard to Air Navigation for any height greater than 160 feet above the ground for this aeronautical study 2006-AWP-1638-OE.

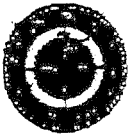
We also understand that there may be two additional planned structures for this development project, of greater height than this current structure. As of this date, there has been no notice submitted to the FAA for these two structures. Proposals which meet the notice filing criteria of Federal Aviation Regulation (FAR) Part 77, Subpart B, must be submitted for evaluation under federal statute. Our office is supplying you this information for your planning purposes.

If you have any questions or need further guidance, please call or email me. Thank you.

KAREN L. MC DONALD
Los Angeles OES
310 725-6557

e-file 7460-1 on-line @ public web <http://oeaaa.faa.gov>
and
register for electronic notification of public OE notices

Exhibit 17



Federal Aviation Administration
Air Traffic Airspace Branch, ASW-520
2601 Meacham Blvd.
Fort Worth, TX 76137-0520

Aeronautical Study No.
2006-AWP-1638-OE

Issued Date: 04/24/2006

Craig Bachmann
Sunroad Enterprises
4445 Eastgate Mall Suite 400
San Diego, CA 92121

**** NOTICE OF PRESUMED HAZARD ****

The Federal Aviation Administration has conducted an aeronautical study under the provisions of 49 U.S.C., Section 44718 and if applicable Title 14 of the Code of Federal Regulations, part 77, concerning:

| | |
|------------|---|
| Structure: | Building |
| Location: | San Diego, CA |
| Latitude: | 32-49-38.0 N NAD 83 |
| Longitude: | 117-8-30.0 W |
| Heights: | 180 feet above ground level (AGL) 596 feet above mean sea level (AMSL) |

Initial findings of this study indicated that the structure as described exceeds obstruction standards and/or would have an adverse physical or electromagnetic interference effect upon navigable airspace or air navigation facilities. Pending resolution of the issues described below, the structure is presumed to be a hazard to air navigation.

Any height exceeding 160 feet above ground level (576 feet above mean sea level), will result in a substantial adverse effect and would warrant a Determination of Hazard to Air Navigation.

See attachment for additional information.

NOTE: PENDING RESOLUTION OF THE ISSUE(S) DESCRIBED ABOVE, THE STRUCTURE IS PRESUMED TO BE A HAZARD TO AIR NAVIGATION. THIS LETTER DOES NOT AUTHORIZE CONSTRUCTION OF THE STRUCTURE EVEN AT A REDUCED HEIGHT. ANY RESOLUTION OF THE ISSUE(S) DESCRIBED ABOVE MUST BE COMMUNICATED TO THE FAA SO THAT A FAVORABLE DETERMINATION CAN SUBSEQUENTLY BE ISSUED.

IF MORE THAN 60 DAYS FROM THE DATE OF THIS LETTER HAS ELAPSED WITHOUT ATTEMPTED RESOLUTION, IT WILL BE NECESSARY FOR YOU TO REACTIVATE THE STUDY BY FILING A NEW FAA FORM 7460-1, NOTICE OF PROPOSED CONSTRUCTION OR ALTERATION.

If we can be of further assistance, please contact our office at (310)725-6557. On any future correspondence concerning this matter, please refer to Aeronautical Study Number 2006-AWP-1638-OE.

Signature Control No: 459586-456879

(NPH)

Karen McDonald
Specialist

Attachment(s)
Additional Information

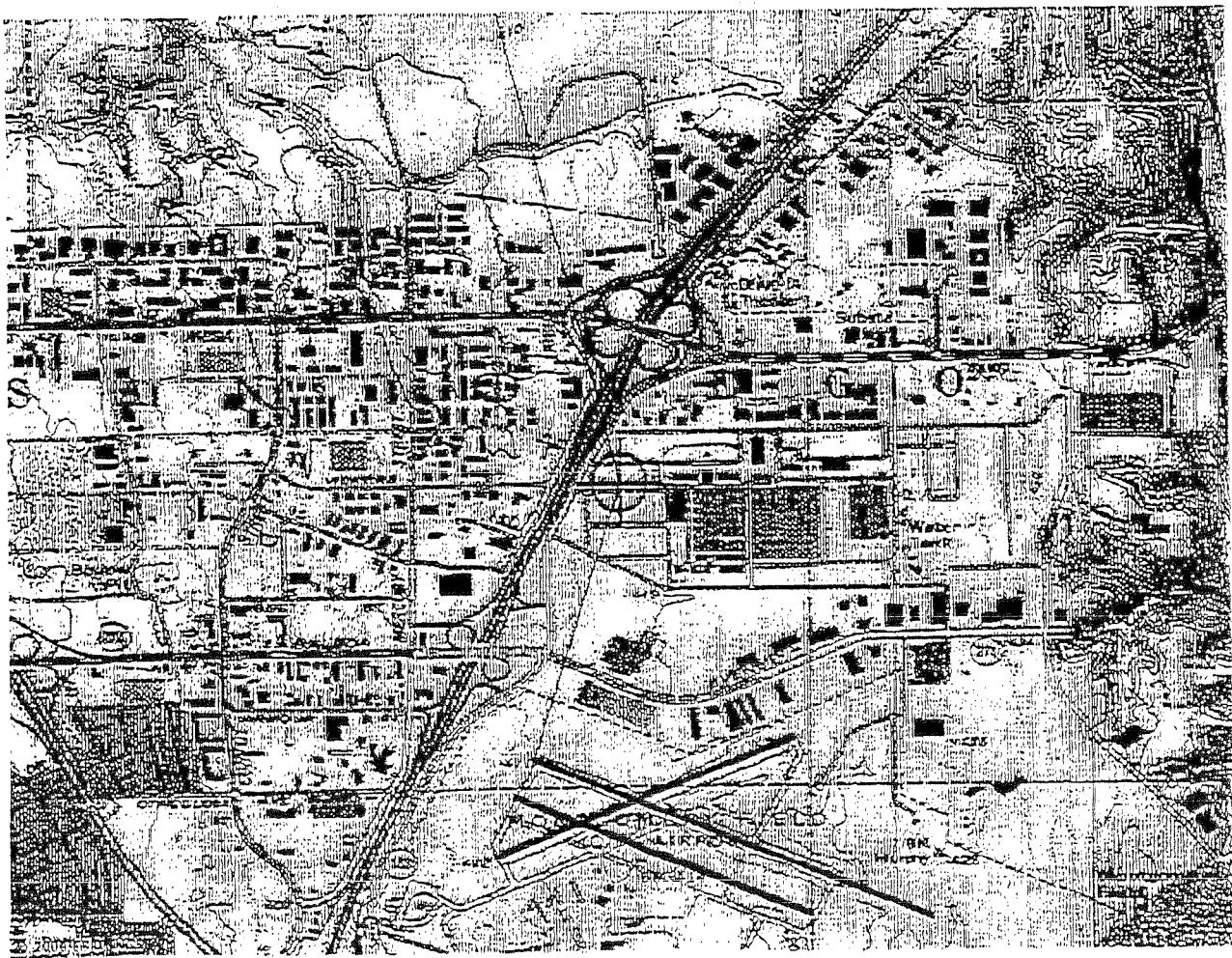


Exhibit 18

From: Tait Galloway
To: Halbert, Gary; Broughton, Kelly
CC: Greer, Keith
Date: 6/19/2006 12:30:00 PM
Subject: FAA Issue w/ Sunroads Centrum 12 (PTS 64541)

Gary; Kelly:

In response to the voicemail that Kelly forwarded to me concerning the FAA, the FAA has a significant issue with the Sunroads Centrum 12 project in Kearny Mesa concerning the building's height.

The proposed project is a 12 story (180 ft) 306,000 sq.ft. office building. It appears that the project is currently in SCR (PTS 64541) and a building permit is being inspected (PTS 84081).

The FAA wants the building height reduced to 160 ft as stated in a letter to the project applicant. Also, the FAA has requested to me that the other proposed projects near this project to be submitted to the FAA.

This proposed project would affect flight operations at Montgomery and affect the City's ability to receive future FAA funding for Montgomery.

The following is based on a conversation I had with Karen McDonald at the FAA (310-725-6557) regarding this project:

On April 5, 2006, the project applicant filed an Obstruction Evaluation and Airport Airspace Analysis request electronically with the FAA for the project. On April 24, the FAA issued a letter to the project applicant Craig Bachman, Sunroads stating that FAA has determined that buildings height at 180 ft would affect the circling radius for the instrument proceeds (TERPS) at Montgomery Field and the FAA recommended a building height of 160 ft; otherwise they would issue an airspace hazard determination.

The FAA received an application from a construction crane company for Obstruction Evaluation for a 300 ft construction crane and the FAA realized that the crane was for the Sunroads Centrum 12 project. The FAA realized that they never received a response from Sunroads regarding their recommendation, so they contacted Sunroads and indicated they would issue an Airspace Hazard Determination for the proposed project. Since the letter is posted electronically, the project applicant indicated to the FAA that they were unaware of the letter. The following is a link to the letter: <https://oeaaa.faa.gov/oeaaaEXT/letterViewer.jsp?letterContentID=456879>

The FAA is concerned since this project would affecting flight operations at Montgomery Field. They indicated that it may affect the City's ability to receive future FAA funding for Montgomery Field. They are also concerned with Centrum 14 (14 story office building) which is currently in SCR (PTS 104341). Centrum 14 has not been submitted to the FAA of an Obstruction Evaluation. The FAA was indicated that it is their understanding that there is a third project similar in size.

Although near the airport, the projects are not in either the Airport Influence Area (AIA) or AEOZ for Montgomery, although they are in the MCAS Miramar AIA.

Since this is a significant issue for the FAA, I told Karen McDonald that I or another staff person at the City would follow up concerning what steps if any the city would take regarding this project and other proposed projects nearby.

Please advise.

Thanks,

Tait

Exhibit 19

SUNROAD
ENTERPRISES

20 June, 2006

Federal Aviation Administration
Air Traffic Division, AWP-500
Attn: Air Traffic Airspace Branch, AWP-520
15000 Aviation Boulevard
Hawthorne, CA 90250

4445 Eastgate Mall
Suite 400
San Diego, California
92121
(858) 362-8500
Fax: (858) 362-8448

RE: 2006-AWP-1638-OE, Dated April 24, 2005

Ms. Karen McDonald:

We have reviewed the Air Traffic Airspace Branch, ASW-520's response of 4/24/06 regarding the above referenced airspace study and the proposed building height of 180 feet above ground level.

We are reviewing the data that was submitted to your office on April 5, 2006.

We have concerns that some of the data contained on our original FAA Form 7460-1 may have been inaccurate. As such we are:

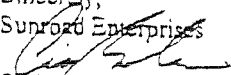
- Requesting our registered engineering firm to:
 - o Develop an engineering survey.
 - o Validate our latitude and longitude in National Geodetic Datum 1983.
 - o Produce an engineered drawing showing exact coordinates and terrain elevations.
 - o Evaluating our proposed above ground building height.

In the meantime, we agree to the 160 foot height specified in your letter of April 24, 2006 which stated that we and the FAA needed to reach a resolution not later than 60 days from the date of your letter.

Should we find any variances in the data previously submitted we will notify the FAA and request re-evaluation.

Thank you for your attention to this matter.

Sincerely,
Sunroad Enterprises


Craig Bachmann
Director of Construction Operations

CC: Federal Aviation Administration
Air Traffic Airspace Branch, AWP-530
2601 Meacham Blvd.
Fort Worth, TX 76137-0520

Exhibit 20

Form 7460-1 for ASN: 2006-AWP-3876-OE


| Overview | | | |
|--|---|-----------|---------------|
| Study (ASN): 2006-AWP-3876-OE | Received Date: 06/22/2006 | | |
| Prior Study: 2006-AWP-1638-OE | Entered Date: 06/22/2006 | | |
| Status: Determined | Completion Date: 06/27/2006 | | |
| Letters: Determination  | Expiration Date: 12/27/2007 | | |
| | Map: View Map | | |
| Sponsor Information | Sponsor's Representative Information | | |
| Sponsor: Sunroads Enterprises | Representative: | | |
| Attention Of: Craig Bachmann | Attention Of: George Williams | | |
| Address: 4445 Eastgate Mall Suite 400 | Address: 2594 W. Wrangler Way | | |
| City: San Diego | City: Queen Creek | | |
| State: CA | State: AZ | | |
| Postal Code: 92121 | Postal Code: 85242 | | |
| Country: USA | Country: US | | |
| Phone: 858-362-8500 | Phone: 480-987-7823 | | |
| Fax: 858-362-8448 | Fax: 480-987-7824 | | |
| Construction Info | Structure Summary | | |
| Notice Of: Alteration | Structure Type: Other - without Antenna | | |
| Duration: Permanent (Months: 0 Days: 0) | Other Description: BUILDING WITH MAXIMUM HEIGHT OF 160'AGL/576'AMSL | | |
| Work Schedule: 06/01/2006 to 06/01/2008 | NACD Number: | | |
| Date Built: | FCC Number: | | |
| Structure Details | Height and Elevation | | |
| Latitude (NAD 83): 32° 49' 38.00" N | Proposed | DNE | DET |
| Longitude (NAD 83): 117° 08' 30.00" W | Site Elevation: | 416 | |
| Datum: NAD 83 | Structure Height: | 160 | 0 160 |
| Accuracy: | Total Height (ASML): | 576 | 0 576 |
| Marking/Lighting: Red lights | | | |
| Other Description: | Frequencies | | |
| Name: Sunroads Centrum 12 | Low Freq | High Freq | Unit ERP Unit |
| City: San Diego | | | |
| State: CA | | | |
| Nearest Airport: MYF | | | |
| Distance to Structure: 4235 feet | | | |
| On Airport: No | | | |
| Direction to Structure: 351.19 | | | |
| Traverseway: NO | | | |
| Description of Location: 8620 Spectrum Center Blvd. | | | |
| Description of Proposal: Commercial Office Building. | | | |

Exhibit 21



Federal Aviation Administration
Air Traffic Airspace Branch, ASW-520
2601 Meacham Blvd.
Fort Worth, TX 76137-0520

Aeronautical Study No.
2006-AWP-3876-OE
Prior Study No.
2006-AWP-1638-OE

Issued Date: 06/27/2006

Craig Bachmann
Sunroads Enterprises
4445 Eastgate Mall Suite 400
San Diego, CA 92121

**** DETERMINATION OF NO HAZARD TO AIR NAVIGATION ****

The Federal Aviation Administration has completed an aeronautical study under the provisions of 49 U.S.C., Section 44718 and, if applicable, Title 14 of the Code of Federal Regulations, part 77, concerning:

| | |
|------------|--|
| Structure: | BUILDING WITH MAXIMUM HEIGHT OF 160'AGL/576'AMSL |
| Location: | San Diego, CA |
| Latitude: | 32-49-38.00 N NAD 83 |
| Longitude: | 117-8-30.00 W |
| Heights: | 160 feet above ground level (AGL) |
| | 576 feet above mean sea level (AMSL) |

This aeronautical study revealed that the structure does not exceed obstruction standards and would not be a hazard to air navigation provided the following condition(s), if any, is(are) met:

As a condition to this Determination, the structure is marked and/or lighted in accordance with FAA Advisory Circular 70/7460-1 70/7460-1K, Obstruction Marking and Lighting, red lights - Chapters 4, 5 (Red), & 12.

It is required that the enclosed FAA Form 7460-2, Notice of Actual Construction or Alteration, be completed and returned to this office any time the project is abandoned or:

X At least 10 days prior to start of construction
(7460-2, Part I)

X Within 5 days after the construction reaches its greatest height
(7460-2, Part II)

See attachment for additional condition(s) or information.

The structure considered under this study lies in proximity to an airport and occupants may be subjected to noise from aircraft operating to and from the airport.

This determination expires on 12/27/2007 unless:

- (a) extended, revised or terminated by the issuing office.
- (b) the construction is subject to the licensing authority of the Federal Communications Commission (FCC) and an application for a construction permit has been filed, as required by the FCC, within 6 months of the date of this determination. In such case, the determination expires on the date prescribed by the FCC for completion of construction, or the date the FCC denies the application.

NOTE: REQUEST FOR EXTENSION OF THE EFFECTIVE PERIOD OF THIS DETERMINATION MUST BE POSTMARKED OR DELIVERED TO THIS OFFICE AT LEAST 15 DAYS PRIOR TO THE EXPIRATION DATE.

This determination is based, in part, on the foregoing description which includes specific coordinates, heights, frequency(ies) and power. Any changes in coordinates, heights, and frequencies or use of greater power will void this determination. Any future construction or alteration, including increase to heights, power, or the addition of other transmitters, requires separate notice to the FAA.

This determination does include temporary construction equipment such as cranes, derricks, etc., which may be used during actual construction of the structure. However, this equipment shall not exceed the overall heights as indicated above. Equipment which has a height greater than the studied structure requires separate notice to the FAA.

This determination concerns the effect of this structure on the safe and efficient use of navigable airspace by aircraft and does not relieve the sponsor of compliance responsibilities relating to any law, ordinance, or regulation of any Federal, State, or local government body.

A copy of this determination will be forwarded to the Federal Communications Commission if the structure is subject to their licensing authority.

If we can be of further assistance, please contact our office at (310)725-6557. On any future correspondence concerning this matter, please refer to Aeronautical Study Number 2006-AWP-3876-DE.

Signature Control No: 471120-473860

(DNE)

Karen McDonald
Specialist

Attachment(s)
Additional Information
Map

7460-2 Attached

THE MAXIMUM HEIGHT OF THIS BUILDING SHALL NOT EXCEED 160 FEET ABOVE GROUND LEVEL (AGL) / 576 FEET ABOVE MEAN SEA LEVEL (AMSL). THIS MAXIMUM HEIGHT SHALL INCLUDE ALL ROOF-MOUNTED APPURTENANCES, INCLUDING BUT NOT LIMITED TO; OBSTRUCTION LIGHTING, ANTENNAS, SIGNS, PARAPETS, ELEVATOR EQUIPMENT, ETC.

ANY HEIGHT GREATER THAN 160'AGL/576'AMSL WILL ADVERSELY IMPACT INSTRUMENT FLIGHT PROCEDURES AT MONTGOMERY FIELD AIRPORT (MYF), THE CLOSEST PUBLIC-USE LANDING AREA.

UPON THE STRUCTURE REACHING ITS MAXIMUM HEIGHT, THE SPONSOR SHALL SUBMIT FAA FORM 7460-2 AS SUPPLEMENTAL INFORMATION. THIS 7460-2 FORM SHALL BE ACCOMPANIED BY AN AS-BUILT CERTIFIED SURVEY ATTACHED. THE CERTIFIED SURVEY SHALL HAVE A 1A-ACCURACY TOLERANCE.

FAILURE TO PROVIDE THIS REQUESTED INFORMATION OR NON-ADHERENCE TO THE MAXIMUM BUILDING HEIGHT REQUIREMENTS WILL RESULT IN THE ISSUANCE OF A HAZARD TO AIR NAVIGATION AIRSPACE DETERMINATION.



Exhibit 22

SUPPLEMENTAL NOTICE

Submission Instructions: For Advance Notice of Actual Construction or Alteration. Complete items 1, 2, 3A (1), 3A (2), and 8. If applicable, also complete items 4 and 5. Detach Part 1. Fold and tape at bottom. Mail to the FAA Regional Office for your area. Part 1A is provided for your file.

Aeronautical Study No.
SUNRO-000044721-06



U.S. Department of Transportation
Federal Aviation Administration

Notice of Actual Construction or Alteration (Please Type or Print on this Form)

1. Construction

A. Type and Description of Construction

☐ New
☒ Alteration

B. Owner of Structure

Sunroad Centrum 12

2. Construction Location -- Height

A. Coordinates (To hundredths of seconds, if known)

Latitude

Longitude

32

49

38.00

117

8

30.00

B. Location (City, State, include Street Address if any)

8620 Spectrum Center Boulevard
San Diego, AZ

C. Construction Heights

Total Height
(Structure & Site)
Above Mean Sea Level

Site Elevation 416
Structure Height 180

FL AMSL
FL AGL

596

FL AMSL

D. Site Elevation Determined by
☒ Actual Survey
☐ USGS 7.5' Quad Chart
☐ Other (Specify)

E. Reference datum of coordinates
☐ NAD 27
☒ NAD 83
☐ Other (Specify)

F. Name of Nearest Public Use or Military Airport
(include Distance and Direction from the Airport)

Montgomery Field, 351.9 degrees direction to structure

3. Construction Notifications

A. Notification

(Notice is Critical to Flight Safety -- FAR Part 77 Required)

Date

B. Construction/Project

Date

(1) Construction will start (Submit at least 48 hrs. in advance)

(1) Project Abandoned

(2) Estimated Completion

(2) Construction Dismantled

(3) Structure Reached Greatest Height (Submit within 5 days)

7-26-06

4. Marking and Lighting

A. Marked

☒ Yes ☐ No ☐ Temporary

B. Lighted

☐ Medium Intensity White
☐ Dual (Medium Intensity White & Red)

☐ High Intensity White
☐ Dual (High Intensity White & Red)

☒ Red
☐ None

5. Antenna Requiring FCC License

A. Call Sign

B. Frequency

C. Date Applied for FCC Construction Permit

D. Date Construction Permit Issued

6. Preparer's Certification

Submitted by: (If submitted by a proponent's representative, please also complete item B.)

A. Proponent's Representative
Name: Williams Aviation Consultants, Inc.

Address: 2594 W. Wrangler Way
Queen Creek, AZ 85242

480-887-7823

Tel. No.: (Include Area Code)

B. Construction Proponent

Name: Craig Bachmann, Sunroad Enterprises

Address: 4445 Eastgate Mall Suite 400
San Diego, CA 92121

1-858-357-6452

Tel. No.: (Include Area Code)

I hereby certify that the information provided is true, complete, and correct to the best of my knowledge.

Signature

Title

Date

[Signature]

Williams Aviation Consultants, Inc.

7-26-06

Notice is required by 14 Code of Federal Regulations, part 77 pursuant to 49 U.S.C., Section 44716. Persons who knowingly and willingly violate the notice requirements of part 77 are subject to a civil penalty of \$1,000 per day until the notice is received, pursuant to 49 U.S.C., Section 46301(a).

Exhibit 23



Federal Aviation Administration
Air Traffic Airspace Branch, ASW-520
2601 Meacham Blvd.
Fort Worth, TX 76137-0520

Aeronautical Study No.
2006-AWP-4601-OE
Prior Study No.
2006-AWP-3876-OE

Issued Date: 08/11/2006

Craig Bachmann
Sunroads Enterprises
4445 Eastgate Mall Suite 400
San Diego, CA 92121

**** DETERMINATION OF HAZARD TO AIR NAVIGATION ****

The Federal Aviation Administration has completed an aeronautical study under the provisions of 49 U.S.C., Section 44718 and, if applicable, Title 14 of the Code of Federal Regulations, part 77, concerning:

| | |
|------------|---|
| Structure: | Building |
| Location: | San Diego, CA |
| Latitude: | 32-49-38.00 N NAD 83 |
| Longitude: | 117-8-30.00 W |
| Heights: | 180 feet above ground level (AGL) 596 feet above mean sea level (AMSL) |

This aeronautical study revealed that the structure as described above would have a substantial adverse effect on the safe and efficient utilization of the navigable airspace by aircraft and/or on the operation of air navigation facilities. Therefore, pursuant to the authority delegated to me, it is hereby determined that the structure would be a hazard to air navigation.

This determination is subject to review if an interested party files a petition that is received by the FAA on or before September 10, 2006. In the event a petition for review is filed, it must contain a full statement of the basis upon which it is made and be submitted in triplicate to the Manager, Airspace and Rules Division - Room 423, Federal Aviation Administration, 800 Independence Ave, Washington, D.C. 20591.

This determination becomes final on September 20, 2006 unless a petition is timely filed. In which case, this determination will not become final pending disposition of the petition. Interested parties will be notified of the grant of any review. For any questions regarding your petition, please contact Office of Airspace and Rules via telephone -- 202-267-8783 - or facsimile 202-267-9328.

This determination concerns the effect of this structure on the safe and efficient use of navigable airspace by aircraft and does not relieve the sponsor of compliance responsibilities relating to any law, ordinance, or regulation of any Federal, State, or local government body.

This aeronautical study considered and analyzed the impact on existing and proposed arrival, departure, and en route procedures for aircraft operating under both visual flight rules and instrument flight rules; the impact on all existing and planned public-use airports, military airports and aeronautical facilities; and the cumulative impact resulting from the studied structure when combined with the impact of other existing or proposed structures. The study disclosed that the described structure would have a substantial adverse effect on air navigation.

An account of the study findings, aeronautical objections received by the FAA during the study (if any), and the basis for the FAA's decision in this matter can be found on the following page(s).

A copy of this determination will be forwarded to the Federal Communications Commission if the structure is subject to their licensing authority.

If we can be of further assistance, please contact our office at (202)267-9219. On any future correspondence concerning this matter, please refer to Aeronautical Study Number 2006-AWP-4601-OE.

Signature Control No: 475300-484230

(DOH)

Kevin P. Haggarty
Manager, Obstruction Evaluation Service

Attachment(s)
Additional Information
Map

Additional Information for ASN 2006-AWP-4601-OE

The building is located 0.70 NM north of the Montgomery Field Airport Reference Point; 3,424 feet from the Runway 10L physical approach end. This public-use airport is located in San Diego County, California.

The building height exceeds the Subpart C Obstruction Standards of Title 14 of the Code of Federal Regulations, Part 77, applied to Montgomery Field as follows:

77.25(a), by 19 feet, a height penetrating the Montgomery Field Horizontal Surface.

77.23(a)(3), by 20 feet, a height that increases minimum instrument flight altitudes within a terminal area (Terminal Procedures criteria). This structure height will change the controlling obstacle for the following;

The ILS Runway 28R and NDB or GPS Runway 28R Category A & B Circling with the PALOS stepdown fix minima.

The structure height also exceeds, by 19 feet, the VFR traffic pattern airspace criteria required to conduct normal operations as applied to the public-use Montgomery Field Airport.

This case was not circularized to the public for aeronautical comment. Current obstruction evaluation policy states that circularization is not necessary when a structure is found to have a substantial adverse effect on aeronautical operations based on an internal FAA study. This does not affect the public's right to petition for review determinations regarding structures that meet this criterion.

The FAA attempted to negotiate with the sponsor to reduce the height of the structure. The original first filing by the sponsor at the same location and height was issued a presumed hazard negotiation letter advising the sponsor of the aeronautical instrument procedural impacts. The sponsor responded with a second filing lowering the structure height to the required acceptable height. The second filing was issued a determination of no hazard. This third filing increased the structure height to the original height of the first filing. The sponsor stated the refusal to lower the structure height was dictated by land availability and location. The sponsor's representative advised the FAA by submission of FAA 7460-2, that the structure had reached its greatest height on the same day as the third filing.

Therefore, it is determined that the structure has a substantial adverse effect on the safe and efficient utilization of the navigable airspace by aircraft and is a hazard to air navigation.

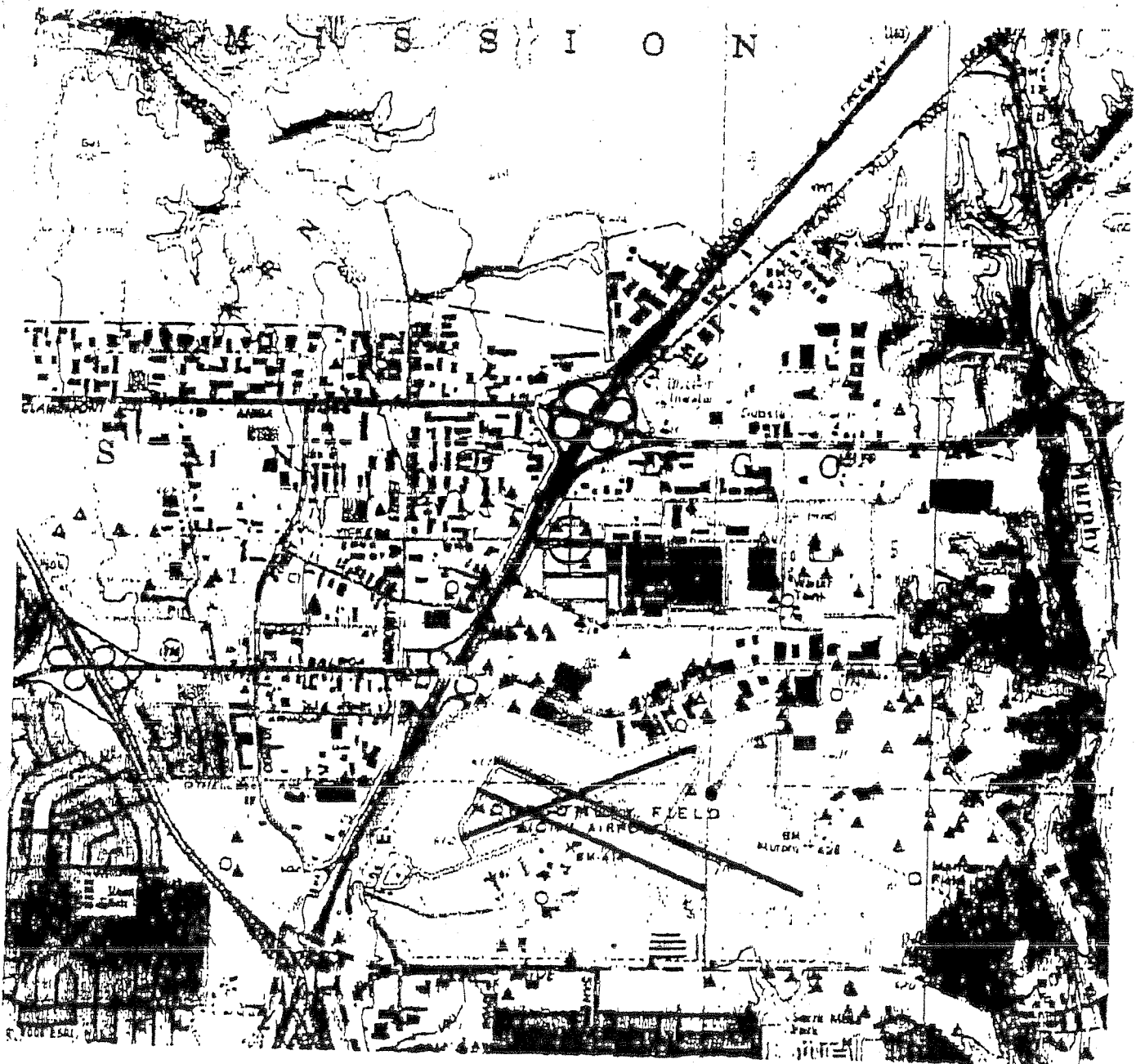


Exhibit 24



CHEVALIER, ALLEN & LICHMAN LLP

Attorneys at Law

Commercial Litigation • Aviation Law & Litigation • Environmental Law & Litigation

September 18, 2006

Mr. Jeff R. Brown
Aviation Safety Officer
Department of Transportation
Division of Aeronautics
1120 N Street
P.O. Box 942873
Sacramento, CA 94273-0001

Re: Sunroad Centrum

Dear Mr. Brown:

We represent Sunroad Enterprises ("Sunroad"), builder and developer of the Centrum project in the area of Montgomery Field. This is in response to your letter of September 14, 2006, in which you assert that a Department of Transportation permit is required for the Sunroad Centrum 1 building ("Centrum") pursuant to *Public Utilities Code* § 21659(a). It is Sunroad's position that this assertion is legally questionable for at least four reasons: (1) the FAA has already raised the circling minimums, eliminating any danger to air navigation, and, thus, *Public Utilities Code* § 21659(a) does not apply; (2) the Centrum project is fully compliant with all city plans and zoning ordinances, including the Airport Environs Overlay Zone ("AEOZ") at Montgomery Field; (3) the Centrum Project is not subject to any current or proposed Airport Land Use Compatibility Plan limitation; and (4) Caltrans may have overstepped its legal boundaries in relying on *Public Utilities Code* § 21659.

I. The FAA Has Already Raised the Circling Minimums By Way of NOTAM and Will Do So Permanently By Jeppesen Publication Upon Notification of Building Completion.

Contrary to Caltrans' claim, the Centrum project does not impact air navigation at Montgomery Field. The FAA has raised circling minimums at Montgomery Field by Notice to Airmen ("NOTAM") thereby accommodating a construction crane at 330 feet which easily subsumes the height of the Centrum 1 building at 180 feet. As the FAA has no power to control land use, it had no choice but to remove the Hazard through operational changes. When the FAA determines that a structure would constitute a hazard to flight, the FAA is required to revise published aeronautical procedures through a NOTAM so as to eliminate the hazard. See 77

Gary M. Allen, Ph.D.
John Chevalier, Jr.*
Bernie C. Hart
Barbara E. Lichman, Ph.D.
Jacqueline E. Senao, LL.M.*
Frederick C. Woodruff

*Retired
*Admitted in New York
*Of Counsel

695 Town Center Drive, Suite 700
Costa Mesa, California 92626
Telephone (714) 384-6520
Facsimile (714) 384-6521
E-mail: cal@calniclaw.com

Exhibit 2



Mr. Jeff R. Brown
Aviation Safety Officer
Department of Transportation
Division of Aeronautics
September 18, 2006
Page 2

C.F.R. § 77.11(b)(5); FAA Order 7400.2F, Section 5-1-3. Ultimately, upon notification of completion of Centrum 1, the FAA will raise the height of the circling minimums by 20 feet, originally through a NOTAM, and eventually depending on the publication cycle, through publication in Jeppesen. Accordingly, Centrum 1 does not fall within the provision of *Public Utilities Code* § 21659, and does not require a Department of Transportation permit.

II. The Centrum 1 Project Fully Complies With Local Zoning Laws.

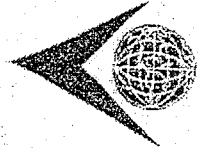
The City of San Diego has overlain an AEOZ on the commercial zoning surrounding Montgomery Field. The Centrum Project fully complies with the height limits in the AEOZ. On that basis, San Diego approved the tentative and final maps for the project and has already granted a building permit to Centrum 1. Sunroad has scrupulously complied with this building permit.

Government Code § 50485.14, as cited by the California Attorney General in 53 Op. Atty. Gen. Cal. 75 (1970) interpreting *Public Utilities Code* § 21659, provides that "Neither this article nor anything expressed in it is intended to be or is to be construed as a denial of the power of local governing bodies and agencies to provide for zoning regulations pursuant to Article XI, Section 11 of the Constitution." To the extent that *Public Utilities Code* § 21659 purports to impose a restriction on land use in excess of that imposed by the local governing body, it is arguably misapplied here.

III. The Centrum Project Does Not Fall Within Any Current or Proposed Airport Land Use Compatibility Zone Established in the Governing Airport Land Use Compatibility Plans.

The current land use compatibility plan for Montgomery Field contains compatibility zones which conform to those established in the California Airport Land Use Planning Handbook. The ALUCP currently proposed by the San Diego Airport Land Use Commission also contains six compatibility zones. Centrum lies outside all these current and proposed compatibility zones. Therefore, the height of Centrum 1 is not constrained by any existing or proposed airport land use compatibility plan.

Mr. Jeff R. Brown
Aviation Safety Officer
Department of Transportation
Division of Aeronautics
September 18, 2006
Page 3



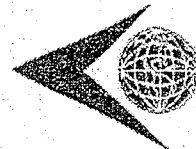
IV. Caltrans is Acting In Excess of its Jurisdiction in Attempting to Apply Public Utilities Code § 21659 to the Centrum Project.

As a general rule, Caltrans may only exercise its jurisdiction over aviation in areas not already occupied by the Federal Government. See *City of Burbank v. Burbank-Glendale-Pasadena Airport Authority* (1999) 72 Cal.App.4th 366, 380. In this case, Caltrans has arguably overstepped that jurisdiction in that it is attempting to enforce height restrictions in the vicinity of Montgomery Field which fall squarely within the area fully occupied by Federal Aviation Regulation ("FAR") Part 77.

The Federal preemption doctrine is derived from the supremacy clause of the U.S. Constitution, and provides that, among other things, where Federal law fully occupies a given field of regulation, the Federal law preempts all state and local law on that subject. The Federal Aviation Act empowers the FAA to fully regulate the use of navigable airspace. Title 14, *Code of Federal Regulations*, Part 77 ("Part 77") establishes height limitations for structures located in the vicinity of airports to avoid penetration of navigable airspace. It is reasonable to conclude that Congress intended that Federal law preempt all state and local law purporting to establish structure height standards in airport environs. In addition, *Public Utilities Code* § 21019 goes much further than Federal law where it imposes penalties which Part 77 does not.

Second, and even if *Public Utilities Code* § 21659 were not encroaching on the domain of Federal regulation, Caltrans' effort to enforce *Public Utilities Code* § 21659 is procedurally defective. For example, unlike Sections 21666 and 21668 which address requirements and conditions for issuing Airport Permits, Section 21659 does not prescribe what procedures need to be followed in applying for a construction permit, or what criteria the Department uses in evaluating permit applications and granting permits. Nor has Caltrans promulgated any regulations implementing Section 21659 which might fill this procedural void. In short, any attempt to enforce *Public Utilities Code* § 21659, and in particular here where full compliance with all existing rules has been achieved, will likely be regarded by the courts as arbitrary, capricious, and, thus, a patent abuse of discretion.

In conclusion, Sunroad understands Caltrans' concern with the interests of aviation, particularly safety, and shares that concern. However, Sunroad believes that aviation concerns must be balanced with a recognition of the right of the City of San Diego to make plans for development within its own jurisdiction, and of the interests of San Diego citizens in relying on the residential and economic development reflected in those plans.



Mr. Jeff R. Brown
Aviation Safety Officer
Department of Transportation
Division of Aeronautics
September 18, 2006
Page 4

We are confident this letter answers Caltrans' concerns.

Sincerely,

CHEVALIER, ALLEN & LICHMAN, LLP

1/51

Barbara E. Lichman, Ph.D.

cc: San Diego Airports Advisory Committee
Bill Anderson, Director, San Diego Planning &
Community Investment Department
Tait Galloway
Mike Tussey, Director, City of San Diego Airports
David Miller, San Diego City Attorney
Tom Story, VP Development, Sunroad Enterprises
Craig Bachmann, Director of Construction, Sunroad Enterprises

Exhibit 25



CHEVALIER, ALLEN & LICHMAN LLP
Attorneys at Law

Commercial Litigation • Aviation Law & Litigation • Environmental Law & Litigation

October 3, 2006

By Facsimile
(916)653-9531

Mary Frederick, Director
California Department of Transportation
Division of Aeronautics
1120 N Street
P.O. Box 942873
Sacramento, CA 94273-0001

Re: Sunroad Centrum

Dear Ms. Frederick:

We represent Sunroad Enterprises, developer of the Sunroad Centrum Project, located within the land use jurisdiction of the City of San Diego and in the vicinity of Montgomery Field, San Diego. This letter is in response to the September 29, 2006 letter from Aviation Safety Officer Jeffrey Brown concerning the purported requirement that Sunroad obtain a permit from Caltrans, pursuant to *Public Utilities Code* § 21659 to enable the completion of Sunroad Centrum 1, the first of the project's three planned buildings.

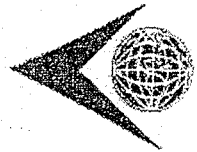
In his September 29 letter (attached here as Exhibit 1), Mr. Brown, among other things, dismisses the position taken by Sunroad in response to Mr. Brown's earlier letter of September 14, 2006, as an attempt to "obfuscate the issue or cause additional delay". Mr. Brown is entirely wrong, and Sunroad stands firmly behind the legal position taken in its letter of September 18, 2006 (a copy of which is attached here as Exhibit 2). Sunroad, therefore, reserves its right to rely upon the legal position taken in its September 18 letter, and in no way waives any option by this attempt to find common ground with Caltrans.

Nevertheless, and despite Mr. Brown's legally inaccurate and diplomatically inadequate response, Sunroad, in an effort to answer Caltrans' concerns, will agree to apply for the permit specified in *Public Utilities Code* § 21659. In order to comply, Sunroad reiterates its request, originally made in its September 18 response to Mr. Brown, for a permit application and a copy of Caltrans' regulations implementing § 21659. Sunroad's goal is to achieve consistency with all local, state and Federal regulations. If Caltrans does not provide the documents required for

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Mary Frederick, Director
California Department of Transportation
Division of Aeronautics
October 3, 2006
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compliance in response to this second request, within 10-business days, Sunroad must proceed on the assumption that Caltrans' permit requirements have been satisfied.

Caltrans immediate cooperation is anticipated.

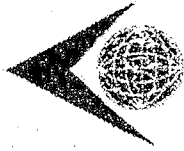
Sincerely,

CHEVALIER, ALLEN & LICHMAN, LLP

Barbara E. Lichman, Ph.D.

cc: Mike Tussey, Airports Director, City of San Diego
San Diego Airports Advisory Committee
David Miller, Attorney, City of San Diego
Tait Galloway, Senior Planner, City of San Diego
Bill Anderson, Director, San Diego Planning & Community Investment Department
San Diego Regional Airport Authority
Tom Story, Vice President Development, Sunroad Enterprises
Craig Bachmann, Director of Construction, Sunroad Enterprises
FAA, AWP 622

Exhibit 26



CHEVALIER, ALLEN & LICHMAN LLP

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Aviation Law & Litigation • Environmental Law & Litigation • Commercial Litigation

October 26, 2006

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Re: Sunroad Centrum Building 1 - Response to Request for "Stop Work" Order

Dear Mr. Miller:

We represent Sunroad Enterprises, Inc. ("Sunroad"), developer of the Sunroad Centrum project ("Sunroad Centrum"). This letter addresses your letter of October 19, 2006 to Jim Waring demanding that the San Diego Department of Land Use and Economic Development issue a Stop Work Order for Sunroad Centrum 12 ("Centrum 12"),¹ the first of three office buildings to be constructed as part of Sunroad Centrum, and implying that judicial abatement, and, ultimately permit revocation are appropriate remedies for what the letter denominates as a public nuisance. Please be advised that the analysis, far from justifying the determination that Centrum 12 is a public nuisance, and, therefore, properly subject to abatement, is seriously flawed for the following reasons: (1) the analysis predicates its "public nuisance" determination under state law and local ordinances on a federal statute, the purpose of which is to ensure efficient use of airspace, not to determine the legitimacy of land use; (2) Sunroad Centrum is not in violation of *Government Code* § 50485.2, and, therefore, does not meet the definition of "public nuisance" under that code; (3) Sunroad Centrum is not in violation of any portion of the San Diego Land Development Code it therefore does not meet the definition of "public nuisance" under that code; (4) Sunroad is not obligated to apply for a permit from Caltrans pursuant to *Public Utilities Code* § 21659; and (5) the issue of Sunroad's failure to appeal the FAA "Hazard Determination" is not relevant. Moreover, Sunroad's right to develop is vested, and thus Sunroad and the City are subject to the rules in effect on the effective date of the original development agreement. Accordingly, the summary abatement and permit revocation proceedings referenced in the letter are entirely unwarranted and legally unsupportable under the circumstances.

¹ Centrum 12 is sometimes called Centrum 1.



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Deputy City Attorney, Civil Division
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I. THE ANALYSIS PREDICATES ITS "PUBLIC NUISANCE" DETERMINATION UNDER STATE LAW AND LOCAL ORDINANCES ON A FEDERAL STATUTE, THE PURPOSE OF WHICH IS TO ENSURE EFFICIENT USE OF AIRSPACE, NOT TO DETERMINE THE LEGITIMACY OF LAND USE.

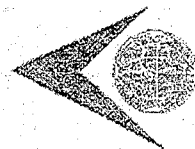
The letter's analysis is flawed at the outset because its fundamental link to "public nuisance", the definition of "airport hazard" in Federal regulation 14 C.F.R. Part 77 differs with the definitions of hazard set forth in state and local statutes and ordinances, and therefore cannot constitute a predicate for enforcement under local law.

The "prime objective" of an FAA "hazard" determination is limited to "ensur[ing] the safety of air navigation and efficient utilization of navigable airspace by aircraft." FAA Order 7400.2F, § 5-1-3 (Attachment A to this letter). Federal regulations also firmly disclaim "specific authority for the FAA to regulate or control how land (real property) may be used in regard to structures that may penetrate navigable airspace." *Id.* at § 5-1-2.a.

In the event a structure penetrates the navigable airspace, FAA is legally required to remedy that penetration, not through mandates concerning the use of land below, but through issuance of a Notice to Airmen ("NOTAM") "to alert pilots to airspace or procedural changes made as a result of the structure." FAA Advisory Circular 70/7460.2K, § 5a. (Attachment B to this letter).

In this case, the FAA did precisely what it is obligated to do, it issued a NOTAM to accommodate the construction crane for Centrum 12 which rose to a height of 330 feet, 150 feet higher than the structure will when it reaches its full height of 180 feet. That NOTAM is still in effect and ensures that operating procedures for aircraft in the vicinity of the Centrum 12 building are adequate to address potential public safety concerns. Therefore, by operation of law, the building is no longer a hazard to air navigation. (The NOTAM is attached to this letter as Attachment C.)

Moreover, even if a NOTAM hadn't been issued, the structure's effect on Montgomery Field's airspace is negligible. It protrudes only 17 feet into a 302 foot buffer zone of vertical clearance between the circling approach to Runway 28R, and an existing obstruction, a water tank, located northeast of the airport which rises to a height of 578 feet, leaving 283 feet of vertical clearance for the circling approach. Consequently, even without a change in procedures, which it was the FAA's mandatory duty to institute, the structure will not constitute a hazard either to air navigation or to the public on the ground. Further, a violation of Part 77, if any,



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Deputy City Attorney, Civil Division
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should be enforced by the FAA as the sole agency charged with its implementation, not the City of San Diego.

II. SUNROAD CENTRUM IS NOT IN VIOLATION OF GOVERNMENT CODE § 50485.2, AND, THEREFORE, DOES NOT MEET THE DEFINITION OF "PUBLIC NUISANCE" UNDER THAT CODE.

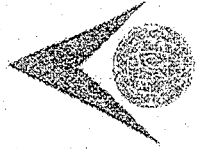
Unlike FAR Part 77, the express purpose of *Government Code* § 50485.2, relied upon in the letter to establish the existence of a "public nuisance", is to designate a mechanism whereby a local government can plan to accommodate property and persons on the ground around airports.

First, the *Government Code* definition of "hazard" differs markedly from the FAA's definition. In order to become an "airport hazard" under the definition set forth in *Government Code* § 50485.2, an object must "endanger the lives and property of users of the airport and of occupants of land in its vicinity." [Emphasis added.] Thus, to be an airport hazard under California law, a structure or use must meet a much higher test than under FAA's regulation Part 77 (which deals only with "the safe and efficient use of navigable airspace, FAA Order 7400.2F, § 5-1-3). As set forth above, however, Centrum 12 cannot plausibly be claimed to rise to that standard, nor does your letter attempt to establish that it does.

Moreover, even if, for argument's sake, Centrum 12 met the definition for "airport hazard" under *Government Code* § 50485.2, that identity would not justify the relief requested in your letter. In fact, the primary purpose of *Government Code* § 50485.2 is to designate a specific mechanism for the prevention of, and relief from, the impacts of "airport hazards" where they exist. That mechanism is zoning (*Government Code* § 50485.3).

"In order to prevent the creation or establishment of airport hazards, every city or county having an airport hazard area within its territorial limits may adopt, administer, and enforce, under the policy power and in the manner and upon the conditions hereinafter prescribed, airport zoning regulations for such airport hazard area . . ." *Government Code* § 50485.3.

The City of San Diego originally met its obligation to control airport hazards through zoning, by enacting, among others, the Airport Environs Overlay Zone ("AEOZ") for Montgomery Field. San Diego Municipal Code ("SDMC"), Article 2, Division 3, § 132.0301, *et seq.* Sunroad Centrum lies outside, and, therefore, is not governed by the AEOZ. The City has not conditioned any of Sunroad Centrum's land use entitlements, dating back to the original 1997



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Development Agreement (amended again in the year 2000 and 2002); its Vesting Tentative Map; or its subsequently issued building permit for Centrum 12, by any limitations on height to accommodate airport operations. As the City has the affirmative obligation "to prevent the creation or establishment of airport hazards", *Government Code* § 50485.3; as the City carried out that responsibility with applicable zoning to prevent airport hazards; as the City, as operator of Montgomery Field, knew or should have known, through the expertise available to it at the time that Sunroad Centrum received its entitlements, that the project, as approved, had the potential for Part 77 or Terminal Area Procedure ("TERPS") violations; and as Sunroad Centrum remains unconstrained by the AEOZ, or conditions on its entitlements with reference to the 180 foot height of Centrum 12, Centrum 12's planned height of 180 feet is clearly acceptable from the perspective of *Government Code* § 50485.2.

III. BECAUSE SUNROAD CENTRUM IS NOT IN VIOLATION OF ANY PORTION OF SAN DIEGO LAND DEVELOPMENT CODE, IT DOES NOT MEET THE DEFINITION OF PUBLIC NUISANCE UNDER THAT CODE.

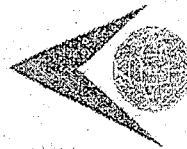
While the letter references SDMC § 121.0302(b)(4) for the proposition that Centrum 12 is a "public nuisance at its current height", the letter neglects to mention that SDMC § 121.0302(b) only applies to "activities" that "occur in a manner contrary to the provisions of the Land Development Code" [emphasis added]. The applicable section of the Land Development Code in this case is Article 2, Division 3, the AEOZ. Sunroad Centrum in general, and Centrum 12 in particular, as set forth above, do not violate the applicable sections of the "Land Development Code" because Sunroad Centrum is not within an area governed by the AEOZ.

Specifically, the AEOZ for Montgomery Field is contiguous with the compatibility zones set forth in the currently applicable Comprehensive Land Use Plan ("CLUP") for Montgomery Field. SDMC § 132.0306(a). The stated purpose of those zones, among others, is to "identify areas of safety hazards." *Id.* [Emphasis added.] Moreover, the CLUP zones contain supplemental restrictions on the height and location of structures with respect to airport operations areas, so as to ensure compatibility with Montgomery Field's and other airports' operations. SDMC § 132.0301(c).

SDMC § 132.0307 was enacted on December 9, 1997. That section provides site planning standards for development within the AEOZ, and mandates that:

"All development proposals shall be reviewed by the City Manager for conformance with the following site planning standards: (a) structures shall be located as far away from the noise source for

David Miller
Deputy City Attorney, Civil Division
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accident potential/flight activity zone as possible, taking maximum advantage of the topography and other site design features to minimize noise impacts and safety hazards . . ." SDMC § 132.0307(a) [Emphasis added.]

The original Development Agreement was executed in April 1998, four months after enactment of Article 2, Division 3 of the SDMC. Nevertheless, even though the AEOZ already existed, the City did not choose to incorporate its constraints into the original Development Agreement.²

In short, Sunroad is not now, nor has it ever been subject to the AEOZ, the applicable section of the "Land Development Code"; could not, therefore, have violated any provision of that section; and, thus, cannot constitute a "public nuisance" as that term is defined in SDMC § 121.0302.

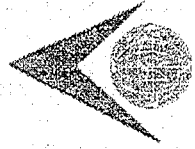
IV. SUNROAD'S RIGHT TO DEVELOP IS VESTED. AND, THUS, SUNROAD AND THE CITY ARE SUBJECT TO THE RULES IN EFFECT ON THE EFFECTIVE DATE OF THE ORIGINAL DEVELOPMENT AGREEMENT.

Sunroad has a vested right to develop by virtue of its Development Agreement, Vesting Tentative Map, Building Permit and the substantial work that has already been completed on Centrum 12.

Under the express terms of its Development Agreement:

"The rules, regulations and official policies governing the permitted use(s) of the property, with respect to the density and intensity of use of the property and the design, improvement and construction standards and specifications applicable to development of the project, shall be those rules, regulations and policies applicable to the property as of the effective date of this agreement. For the purposes of this agreement, 'rules, regulations

² The Development Agreement was originally entered into between the City and General Dynamics Property, Inc. The First Amendment to the Development Agreement named LNR Kearny Mesa, Inc. as successor to General Dynamics Property, Inc. The Second Amendment to the Development Agreement recognized Sunroad's acquisition of fee ownership of a portion of the real property governed by the Development Agreement.



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and official policies' shall include all existing laws." Original Development Agreement § 5.1.

While the City is not proscribed by the Development Agreement from "applying future policies then in effect, including, without limitation, the then current provisions of the Uniform Building Code", *Id.*, the applicability of these "future policies" is limited to those which "do not conflict with existing laws, the project entitlements, or the express provisions of this agreement." *Id.*

The original Development Agreement defines such "conflict", *Id.*, as future policies which

"modify the permitted types of land uses, the density or intensity of use, the maximum height or size of proposed buildings on the property, building and yard set back requirements, or impose requirements for the construction or provision of on-site or off-site improvements or the reservation or dedication of land for public use . . . other than are in each case specifically provided for in this Agreement" *Id.* at § 5.1.1 [emphasis added];

and/or "prevent the owner from obtaining all necessary approvals, permits, certificates or other entitlements in accordance with the terms of this Agreement." *Id.* at 5.1.2.

While a "local agency may apply subsequent regulations to the project, if it determines failure to do so would create a condition dangerous to the public health or safety", *Government Code* § 65865.3(b) [emphasis added], "subsequent" regulations are not at issue here. The applicable state and local regulations were enacted years, even decades, before the City entered into the original Development Agreement.³ Thus, the City knew when it executed the Development Agreement about the requirements of those statutes and ordinances and affirmatively chose not to apply them to Sunroad Centrum in a way that constrains the height of its proposed development to accommodate Montgomery Field.

The original Development Agreement did, however, accommodate the potential for future imposition of the "police power". Where the use of public power is contemplated, the City Council is obligated to "recognize and consider the circumstances existing at the time this Agreement was authorized." Original Development Agreement § 5.16. The circumstances

³ *Government Code* § 50485.2 was enacted in 1953, amended in 1976; § 50485.3 was also enacted in 1953; the AEOZ provision of the SDMC was enacted in 1997.



David Miller
Deputy City Attorney, Civil Division
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Page 7

existing at that time, 1998, were substantially the same as exist today with respect to the development criteria for the commercial component of Sunroad Centrum. The City has had ample time to consider the impacts of Sunroad Centrum in general, and Centrum 12 in particular, and has declined to impose any additional constraints, either through the exercise of the police power, or through negotiations. As the extant evidence makes abundantly clear, circumstances have not changed so as to justify so draconian a measure as the exercise of police power contemplated in the letter.

V. THE ISSUE OF SUNROAD'S FAILURE TO APPEAL THE FAA "HAZARD DETERMINATION" IS A RED HERRING.

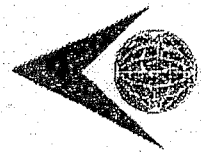
Your letter raises the issue of Sunroad's failure to appeal the FAA's "hazard" determination and, therefore, its consequent finality, as somehow validating the public nuisance analysis in the letter. Nothing could be further from the truth. First, Sunroad declined to appeal the determination because, even if the impingement of the Centrum 12 structure into the circling minimums for Runway 28R had not been a mere 17 feet above the nearest obstacle, the FAA has, as set forth above, a mandatory duty to mitigate any interference with air navigation or the efficiency of the system, which it did timely by issuing the NOTAM for the construction crane at a height greatly in excess of that of the building.

Second, the appeals process, as set forth in FAR Part 77.35 and associated Orders and Advisory Circulars has a nonspecific and potentially indeterminate length, which would not only have indefinitely delayed Sunroad's construction on Centrum 12, which was already underway, with associated costs of delay, but would also have potentially delayed permanent resolution for pilots through the publication of new procedures.

In light of the fact that the FAA does not control land use around airports, and that Sunroad Centrum is fully compliant with all applicable Land Development Codes, Sunroad's position was, and is, that there was nothing to be gained by the costly and time consuming appeals process. Sunroad's decision not to participate in the Federal appeals process cannot, however, be construed as in any way validating the denomination of Sunroad as a "public nuisance" under totally separate and distinct state and/or local law.

VI. SUNROAD IS NOT OBLIGATED TO APPLY FOR A PERMIT FROM CALTRANS PURSUANT TO PUBLIC UTILITIES CODE § 21659.

As set forth in greater detail in Attachment D to this letter, neither Sunroad nor any other party is obligated to apply for a permit pursuant to *Public Utilities Code* § 21659. This is



David Miller
Deputy City Attorney, Civil Division
City of San Diego
October 26, 2006
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because, even though Caltrans' permit requirement meets the definition of a "regulation" under the Administrative Procedures Act, *Government Code* § 11342.600; and even though

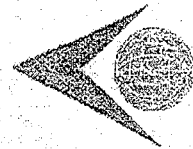
"No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application or other rule which is a regulation as defined in section 11342.600, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application or other rule has been adopted as a regulation and filed with the Secretary of State . . ." *Government Code* § 11340.5(a),

Caltrans has not implemented the requirements of § 21659 with any properly enacted regulation, pursuant to the California Administrative Procedures Act, *Government Code* § 11340, *et seq.*

In response to Sunroad's October 3, 2006 letter requesting a permit application and governing regulations to instruct Sunroad in the best manner in which to fill out the application (see Attachment E to this letter), Caltrans made a demand for a number of documents, most of which were unrelated to the height or other relevant structural characteristics of Centrum 12. Sunroad declined to send the documents, but assured Caltrans that it would be willing to apply for a permit as soon as Caltrans enacts relevant regulations that meet the purpose of the Administrative Procedures Act,

"to ensure that those persons or entities whom a regulation will affect have a voice in its creation [citation], as well as notice of the law's requirements so that they can conform their conduct accordingly [citation]. The legislature wisely perceived the parties subject to regulation is often in the best position, and has the greatest incentive, to inform the agency about possible unintended consequences of a proposed regulation. Moreover, public participation in the regulatory process directs the attention of agency policymakers to the public they serve, thus providing some security against bureaucratic tyranny." *Morning Star Company v. State Board of Equalization*, 38 Cal.4th 324, 336 (2006).

In addition, Sunroad submitted a Public Records Act request to Caltrans on October 4, 2006 requesting copies of all applications for *Public Utilities Code* § 21659 permits received by Caltrans, and all such permits ultimately issued by Caltrans, since this section was codified in state law on January 1, 1986. The response from Caltrans revealed that no permit applications



David Miller
Deputy City Attorney, Civil Division
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have been made, nor any permits granted by Caltrans pursuant to *Public Utilities Code* § 21659. Despite this fact, there are hundreds of structures in the City of San Diego alone that constitute obstructions to air navigation as that term is defined under 14 C.F.R. Part 77. The absence of any permit applications, permits, or requests by Caltrans that permits be issued or denials of permits since that time demonstrate indisputably that Caltrans has "singled out" the Sunroad project for distinctive treatment.

In summary, Sunroad has acted within the law, and to the extent of its obligations under the law, in attempting to obtain a permit pursuant to P.U.C. § 21659 from Caltrans. Sunroad cannot be lawfully required to do more.

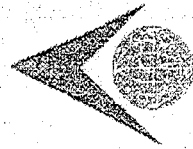
VII. THE SUMMARY ABATEMENT AND PERMIT REVOCATION PROCEEDINGS REFERENCED IN THE LETTER ARE ENTIRELY UNWARRANTED AND LEGALLY INSUPPORTABLE UNDER THE CIRCUMSTANCES.

The letter further advises that the City has the authority to abate a "public nuisance", either summarily or through "filing criminal or civil actions"; and that a building permit revocation proceeding would be applicable. These conclusions, like the purported determination of "public nuisance" itself, bootstraps from the original, flawed assumption that the FAA's "hazard" determination somehow creates a "public nuisance" under state law, and must fall for the same reason.

First, the letter demands the issuance of a Stop Work Order for the project. However, a Stop Work Order can only be issued "whenever any work is being performed that is contrary to the provisions of the Land Development Code." SDMC § 121.0309(a). As set forth in detail above, all work on Centrum 12 is fully compliant, not only with all provisions of the Land Development Code, but also with all the provisions of Sunroad's entitlements.

Second, the letter refers to the potential for judicial abatement, pursuant to *Government Code* § 38773, SDMC § 12.0204. Once again, however, judicial abatement is permissible only for "public nuisances", and as has been established in detail above, Centrum 12 does not rise to the level of a public nuisance under state or local law.

Finally, the letter opines that Centrum 12 may be subject to permit revocation proceedings pursuant to SDMC §§ 121.0314(c)(4) and (5). The letter does not, however, account for the fact that: (1) Centrum 12's conflict with Federal regulation Part 77, minor though it may be, resulted directly from the inapplicability of the AEOZ or any other ordinance or regulation which would have subjected Sunroad Centrum to the scrutiny otherwise applied to projects in its



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Deputy City Attorney, Civil Division
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circumstance; and (2) whatever impact might have existed from this variance from Part 77 standards has been abated by the FAA's issuance of a NOTAM at a height greatly in excess of Centrum 12's 180 foot full height.

In summary, if Sunroad Centrum had been subject to any height constraint, statutory, regulatory, or negotiated, Sunroad would have abided by that constraint as it has abided by the requirements of all its existing entitlements, and with the Land Development Code in its entirety. The City cannot be seen now to attempt to halt a planned, approved and vested project: having exempted Sunroad Centrum from the AEOZ; having known of development proposals for the Sunroad Centrum property for at least eight years, since before the signing of the original Development Agreement; and having sufficient expertise with respect to Montgomery Field operations during those years to have effectively conditioned Sunroad's entitlements to accommodate them. Moreover, the City cannot be seen to do so on the sole ground of an FAA determination explicitly inapplicable to the control of land use, the impact of which, if any, has been remedied by a change in operations that more than accommodates the height of all Sunroad Centrum planned buildings, and which effectively eliminates all issues of safety of "air navigation" or "the efficient utilization of navigable airspace by aircraft", the FAA's sole charge and benchmark. Rather than accepting the assertions of staff at Caltrans and the FAA, the City attorney should be seeking to ensure that the full and long-established prerogatives of the City's land use authority are respected.

In light of these facts, and the vast weight of applicable law, it is Sunroad's position that any attempt to halt construction of Centrum 12 would subject the City to potential legal action, including, but not limited to, claims for breach of its Development Agreement and for the taking of its property, claims amply demonstrated by both facts and law. Therefore, Sunroad requests that the City refrain from taking any enforcement action pursuant to the recommendations of the subject letter, and continue to cooperate with Sunroad in creating a project that will enhance both the economy and the quality of life in the City of San Diego.

Sincerely,

CHEVALIER, ALLEN & LICHMAN, LLP

Barbara E. Lichman, Ph.D.

Attachments

Marcela Escobar-Eck - Sunroad Centum Building 1 - Response to Request for Stop Work Order

From: "Chevalier, Allen & Lichman, LLP" <cal@calairlaw.com>
To: "David Miller" <demiller@sandiego.gov>, "Jim Waring" <jwaring@sandiego.gov>, "Marcella Escobar-Eck" <mescobareck@sandiego.gov>, "Rick Vann" <rvann@sunroadenterprises.com>, "Dan Feldman" <dfeldman@sunroadenterprises.com>, "Tom Story" <tstory@sunroadenterprises.com>
Date: 10/26/2006 12:17:20 PM
Subject: Sunroad Centum Building 1 - Response to Request for Stop Work Order

Please see the attached letter. The attachments to the letter will follow.

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CHEVALIER, ALLEN & LICHMAN, LLP
695 Town Center Drive, Suite 700
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cal@calairlaw.com

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Exhibit 27

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NOV 28 2006

DEVELOPMENT SERVICES

November 28, 2006

Steven M. Strauss

T: (858) 550-6006
sms@cooley.com

Mr. James T. Waring
Land Use and Economic Development
Office of the Mayor
City of San Diego
202 C Street, 9th Floor
San Diego, CA 92101

Re: Appeal by Sunroad Enterprises of Stop Work Order issued October 27, 2006

Dear Mr. Waring:

We are writing on behalf of our client, Sunroad Enterprises ("**Sunroad**"), regarding the Stop Work Order issued on October 27, 2006 (the "**Order**") by the City of San Diego (the "**City**") with respect to the top seventeen feet of Sunroad's Centrum 1 building (the "**Building**"). Pursuant to § 121.0309(c) of the San Diego Municipal Code ("**SDMC**"), Sunroad hereby appeals the Order. Sunroad requests that the City immediately lift the Order and allow construction to proceed on the Building.

As we explain below, the Order arises (a) from a misunderstanding of the FAA's "Determination of Hazard to Air Navigation" (the "**Determination**"), (b) from a misinterpretation of the public nuisance provisions of California Government Code § 50485.2, and (c) from an improper reference to Public Utilities Code ("**PUC**") § 21659(a).

The Building, in fact, poses NO threat to public safety, is NOT a public nuisance, has vested development rights (in favor of Sunroad), and should be allowed to proceed to completion.

The Determination is one component of a complex set of FAA regulations. Under these regulations, the Determination requires changes at the relevant airport (flight paths, circling patterns, etc.), which effectively ELIMINATE any "hazard." In our case, the Determination caused the FAA to issue a Notice to Airmen (the "**NOTAM**") which alerted pilots to the building's presence and raised pilots' circling approach altitude minimums. Once the NOTAM was issued, any potential threat to the safety of air navigation was effectively eliminated.

California Government Code § 50485.2 is NOT a basis for a finding that the Building is a public nuisance and is NOT a basis for the Order. To the contrary, § 50485.2 is designed *solely* to allow local agencies to create zoning rules, NOT to make determinations of nuisance with respect to in-process developments. In our case, that Government Code provision allowed the City to implement the airport zones that related to Montgomery Field. And the Building falls *outside* those airport zones.

PUC § 21659(a) may not be a basis for the Order. The Building is outside those airport zones where the City may apply this statute. The Caltrans issue is not one of nuisance but is a non-substantive, ministerial matter that Sunroad is working to resolve.

With a proper understanding of the Determination, the NOTAM, Government Code § 50485.2, and PUC § 21659(a), the City has no basis to stop work at the Building. The Building poses NO threat to public safety, is not a public nuisance, and the City has no basis for so alleging. Sunroad has vested development rights with respect to the Building—most recently based on the building permit issued by the City AFTER the Determination was a matter of public record to the City.

The Order should be withdrawn. Otherwise, Sunroad will incur further extraordinary and irreversible expenses. And the City risks being liable to Sunroad for those expenses.

I. Background

A. The Building and Development Permits Granted by the City of San Diego

The City of San Diego approved Sunroad's Centrum development in November, 2002. This development, located near the Montgomery Airfield, is a combination of offices and residential buildings. The Building at issue is a 300,000 square foot, 12 story office complex. The Building is located at the northeast corner of Spectrum Center Boulevard and Kearny Villa Road. The City approved Substantial Conformance Review for the Building on February 10, 2006. At that time, the City approved construction of the Building to a height of 180 feet. On March 27, 2006, the City issued a framing and foundation permit for the Building to a height of 180 feet.

B. The City's Relevant Land Use Plans

The Centrum development is located within one mile of Montgomery Field but outside the following airport land use designated zones and adjuvant noise contours: (1) the Airport Land Use Compatibility Plan for Montgomery Field ("ALUCP"); (2) the Montgomery Field Airport Environs Overlay Zone ("AEOZ"); and (3) the Kearny Mesa Community Plan, Airport Element – Montgomery Field ("KMCPAE").

C. FAA Resolutions as well as Concurrent Action Taken by Sunroad and the City of San Diego

Title 14 of the Code of Federal Aviation Regulations ("FAR") Part 77.25 establishes an imaginary airport surface in the airspace above and around an airport. This imaginary plane, the Horizontal Surface, extends 160 feet above the established airport elevation. Entities constructing a building which may invade this Horizontal Surface are obligated to file a Notice of Construction with the FAA. FAR Part 77.15. Sunroad filed such notice on April 5, 2006. On April 24, 2006, the FAA released a "Notice of Presumed Hazard" for the Building. This notice

concludes that the Building would eclipse the Horizontal Surface by 20 feet. Pursuant to this notice, the FAA conducted a more extensive aeronautical study of the Building as authorized by 49 U.S.C. § 44718 and FAR Part 77.33. The study took several months to complete.

Immediately following the issuance of the "Notice of Presumed Hazard," Sunroad investigated the consequences of receiving such a notice by the FAA. Sunroad hired Williams Aviation Consultants to determine whether the Centrum project would exceed the Part 77 standards. Consistent with this cautious approach, Sunroad filed a notice with the FAA on June 22, 2006. The notice informed the FAA that Sunroad would erect the Building to only 160 feet while Sunroad conducted its own investigation.

Ultimately, Sunroad determined that a number of steps could be taken by the City, the FAA and Sunroad to eliminate any perceived risks to public safety. One such precaution is the NOTAM (i.e. the FAA Notice to Airmen) which raised flight minimums above the Building. These modified flight procedures would place pilots on notice of the obstruction and raise flight minimums to accommodate the FAA buffer zone. To accommodate the construction crane for the Building, a NOTAM has been in place over this structure since June 11, 2006. The current NOTAM is actually 220 feet higher than is needed for the Building. Additionally, Sunroad determined that lighting or markings may be placed on the Building to alert pilots to the Building's presence. In light of these mitigation measures, Sunroad determined that the Building presented no risk to the public at a height of 180 feet.¹

On July 7, 2006, the City supported this determination. With full knowledge and notice that the FAA was conducting a more in-depth aeronautical survey of the Building, the City granted Sunroad a building permit for the Building. The July 7, 2006 building permit was for a building 180 feet tall. Sunroad, having completed its own investigation of the Building's safety and with the ostensible approval of the City to continue construction, informed the FAA on July 25, 2006 of Sunroad's intent to construct the Building to the City permitted height of 180 feet.

Upon completing its FAR Part 77 investigation, the FAA issued, on August 26, 2006, the Determination (i.e. the Determination of Hazard to Air Navigation). Because the FAA had already taken the procedures mandated by FAA Circular 70/7460.2K, § 5a, namely, issuing a NOTAM for the construction crane used to build the Building, the Building was already protected.

D. Caltrans Permit Request

On September 14, 2006, Caltrans notified Sunroad that it was in violation of PUC § 21659(a). This statute provides that no person shall construct a structure that exceeds the

¹ Additionally, Williams Aviation Consultants found that another structure in the area, a water tank located north of the airport, also qualifies as a "hazard" and is permitted to remain.

maximum height requirements listed in FAR Part 77 without first obtaining a permit from Caltrans. Based on the Determination, Caltrans requested Sunroad apply for such a permit.

E. October 19 Letter from the City

The City Attorney's office sent a letter to you on October 19, 2006, requesting the Department of Land Use and Economic Development issue a Stop Work Notice for the Building. The City Attorney's letter cited three reasons why the top seventeen feet of the Building created a public nuisance that warrants a Stop Work Order: (1) the building violates state, local and federal law because it is a hazard according to the FAA Determination and California Government Code § 50485.2; (2) as a hazard, the building qualifies as a public nuisance under Government Code § 50485.2 and SDMC § 11.0210; and (3) the Caltrans dispute constitutes an ongoing violation of state law.

Based on that letter, the City issued a Stop Work Order for the Building on October 27, 2006. The Order required that construction be stopped on the top seventeen feet of the Building. Sunroad now appeals this order.

II. **The Determination Does Not Indicate A Violation of Federal Law Nor Does It Constitute Sufficient Grounds to Declare the Building an Airport Hazard.**

The City Attorney's letter uses the Determination to justify the Order based on the allegation that (a) the Determination is a violation of Federal Law, (b) the Determination's use of the word "hazard" falls within the purview of Government Code § 50485.2, and (c) the term "hazard to air navigation" in the Determination and "airport hazard" in Government Code § 50485.2 are synonymous. For the following reasons these claims are not correct.

First, the Determination does not implicate a violation of *any* Federal law. Rather, it serves as a notice to implement the procedures required by FAA Advisory Circular 70/7460.2K, § 5a. The FAA complied with the Advisory Circular by issuing a NOTAM for the construction crane. Furthermore, when the Building is completed, the FAA will *reduce* the present NOTAM and implement a change of flight minimums to accommodate the Building. The Determination is not an indicator of actionable conduct but sets in motion procedures to eliminate any source of risk.

Second, it is improper to correlate the Determination with a state land use statute. The FAA specifically disclaims authority over land use. FAA Order 7400.2F, § 5-1-2a. Government Code § 50485.2, a land zoning statute, states the "creation or establishment of *airport hazards* be prevented by the appropriate exercise of the police power" (emphasis added). These statutes relate to entirely different matters, the FAA's to "air navigation" or "the efficient utilization of navigable airspace by aircraft" and the Government Code's to potentially life-threatening land use.

Third, the use of the word hazard within each statute is vastly different. The FAA's FAR Part 77 provision focuses on efficient and safe use of airspace. To the contrary, Government Code § 50485.2 has grave implications as it states "an airport hazard endangers the lives and property of users of the airport and occupants of land in its vicinity." Therefore, a hazard under § 50485.2 must meet a much higher and more threatening standard than that of FAR Part 77. Due to the NOTAM, the Building fails to meet the elevated standard of § 50485.2.

III. Government Code § 50485.2 Relates Solely to the City's Zoning Power.

The October 19 letter bases the Order on the authority granted by Government Code § 50485.2. However, the purpose of this statute is solely to enable the City to develop and implement zoning procedures. Government Code § 50485.2 states, "it is therefore necessary in the interest of the public safety, and general welfare that the creation or establishment of airport hazards be prevented by *appropriate* exercise of the police power" (emphasis added). The language of the statute is intentionally circumspect. The statute is predicated on using a certain, appropriate police power. The appropriate power is found in the title of the statute's chapter, "Airport Approaches Zoning Laws." The October 19 letter neglects this fact and instead borrows the language wholesale to justify the Order.

No authority is granted under Government Code § 50485.2 allowing the City to issue a Stop Work Order or otherwise halt building construction. This statute and the statute following it deal solely with airport zoning regulations. One treatise comments,

"To prevent the creation or establishment of airport hazards, a city may adopt, administer, and enforce under its police power, airport zoning regulations that may divide the hazard area into zones. Within the zones, the regulations may specify the land uses permitted and regulate and restrict the height to which structures or trees may be erected or allowed to grow." Cal.Jur.3d, *Municipalities*, § 443.

Thus, the City has no authority to issue a Stop Work Order under this statute. § 50485.2 is specifically aimed at airport zoning.

San Diego has, in fact, instituted a number of airport zoning regulations. See e.g., SDMC §§ 132.0201 and 132.0301. Pursuant to its affirmative duty under § 50485.2 "to prevent the creation or establishment of airport hazards," the City zoned the area around Montgomery Field. Specifically, this airport is governed by the AEOZ which is contiguous with the compatibility zones set forth in the current Comprehensive Land Use Plan for Montgomery Field. SDMC § 132.0306(a). The City met its safety obligations under Government Code § 50485.2 by enacting these zones. The Building, however, does not fall within this restricted area. Further, the City has not conditioned any of Sunroad's permits or entitlements on following the mandates of these zones.

IV. The Building Does Not Meet the Definition of Public Nuisance Under City or State Law and Violates No Provisions of the Land Development Code.

The October 19 letter declares the Centrum project a public nuisance based on (a) Government Code § 50485.2, and (b) SDMC § 11.0210. The Building does not qualify as a public nuisance under either statute, nor does it violate any other applicable section of the Land Development Code.

First, Government Code § 50485.2 may not be the basis of such a determination for the reasons stated in the previous two sections. This statute grants authority to institute city zoning procedures, not to determine nuisances for projects already in development.

Second, the Municipal Code's own definition of nuisance does not apply as there is no threat to the safety or general well being of the public. The City defines a public nuisance as: "any condition caused, maintained or permitted to exist which constitutes a threat to the public's health, safety and welfare." SDMC § 11.0210. The FAA Determination resulted in action, the NOTAM, which eliminated any potential source of danger.

Finally, Sunroad does not violate any other applicable section of the Land Development Code. The most applicable section of the Land Development Code to this case is the SDMC Article 2, Division 3, AEOZ. Specifically, sections 132.0201(c) and (d) state the purpose of this code is provide the City the "opportunity to participate in the evaluation process conducted by the FAA and CALTRANS" and to ensure "the minimum vertical buffers are provided between the FAA-established approach paths and *structures* constructed within the Airport Approach Overlay Zone." The entirety of the Centrum development, however, falls outside the AEOZ. When granting building permits and entitlements, the City never subjected the Centrum development to any of the AEOZ regulations. As such, this SDMC division is inapplicable.

The City has failed to show any violation of the Land Development Code. SDMC § 121.0309 demands some breach of the Land Development Code before a Stop Work Order may be issued. The Order is, therefore, unwarranted.

V. The Caltrans Dispute Is Immaterial to the City's Position.

The City cannot justify the Order using PUC § 21659(a). SDMC § 132.0201 states the purpose of the AEOZ is to ensure "that the applicable provisions of California Public Utilities Code Section 21659, as administered by the California Department of Transportation (Caltrans), are satisfied." However the Centrum development is outside the AEOZ. Therefore, this statute has no effect. Instead, Caltrans has sole discretion to enforce PUC § 21659(a) using the penalties provided to it by PUC § 21019. Sunroad fervently believes such penalties will not be necessary as it is in compliance with all state laws.

VI. Sunroad's Rights to Develop Have Vested.

Sunroad has a vested right to build the Building to 180 feet because of the July 7, 2006 building permit. California law holds, "[i]f a property owner has performed substantial work and incurred substantial liabilities in good reliance on a permit issued by the government, he acquires a vested right to complete construction in accordance with the terms of the permit." *AVCO Community Developers, Inc. v. South Coast Regional Comm'n* (1976) 17 Cal.3d 785, 791 (citing *Dobbins v. City of Los Angeles* (1904) 195 U.S. 223). Additionally, Sunroad's rights have vested regarding its Vesting Tentative Map, Government Code §§ 66498.1-66498.9, and its Development Agreement, Government Code §§ 65843-65869.5

Although the City is not prohibited from applying future policies to the Development Agreement, such policies are limited to "those which do not conflict with existing laws, the project entitlements or the express provisions of this agreement." Original Development Agreement § 5.1. Within the definition of conflicts within the Development Agreement are those conflicts affecting "the maximum height or size of proposed buildings on the property." *Id.* at § 5.1.1. The right to erect the Building to 180 feet has therefore vested.

VII. Potential Mitigation Measures

Notwithstanding the fact that Sunroad believes that the City issued the Stop Work Order in error, Sunroad is prepared to consider participating with the City in implementing the following mitigation measures:

First, Sunroad is currently asking the FAA to permanently change circling minimums to Runway 28R to accommodate the Building. Such changes will actually lower the minimums now in place. Furthermore, it will raise pre-Centrum flight minimums by less than 20 feet.

Second, Sunroad has already installed install lighting and placed markings on the Building to alert pilots to the Building's presence and is willing to make these fixtures permanent. While Government Code § 50485.2 charges the City with the costs of such measures within airport zones, Sunroad is willing to consider paying for such safety measures in order to complete the Centrum projects.

Third, Sunroad is willing to participate in the installation of an Instrument Landing System to Runway 10. This would eliminate the need for the circling approach now at issue. The City, as operator of the airport, would traditionally shoulder the cost of this improvement. Sunroad, however, is willing to consider contributing to the costs of this system in order to eliminate safety concerns and ensure the full development and growth of Kearny Mesa as envisioned in the Spectrum Master Plan.



Mr. James T. Waring
November 28, 2006
Page Eight

VII. Conclusion

Sunroad requests the Order be lifted immediately. Failure to do so by the City will result in irreparable harm. The City's failure to lift the Order may constitute a breach of the Development Agreement, thereby exposing the City to significant damages claims by Sunroad. We hope that the City will act in accordance with relevant law and the Development Agreement.

Sincerely,

A handwritten signature in black ink that reads "Steven M. Strauss". The signature is written in a cursive, flowing style.

Steven M. Strauss

CC: Mr. Aaron Feldman
Mr. Tom Story
Mr. Dan Feldman

520888 v16/SD

**AMERICAN
MESSENGER
SERVICE**
LEGAL COURIER & ATTORNEY SERVICE

JOB # 121810

Phone: 1-866-444-0891

2870 4th Avenue, Suite 102
San Diego, CA 92103
Fax: (619) 278-0892

615 Civic Center Dr. W., Suite 215
Santa Ana, CA 92701
Fax: (714) 547-1175

DATE: 11-28-06

DRIVER: 102

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| CALLER: <u>Digitel</u> | EXT. <u>6211</u> | ATTY. INIT. | FLOOR | ACCOUNT REFERENCE # <u>305673.705</u> |
| FIRM NAME: COOLEY GODWARD KRONISH LLP 4401 Eastgate Mall San Diego, CA 92121 (858) 550-6000 | | | NAME: <u>Margie Escobar</u> ADDRESS: <u>1222 First Ave MS 501</u> PHONE: <u>S.D. 92101</u> | |

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| PHONE: | | <input type="checkbox"/> PROOF PROVIDED <input type="checkbox"/> FACE PAGES ATTACHED |
| <input type="checkbox"/> PERSONAL <input type="checkbox"/> SUBSTITUTED OK <input type="checkbox"/> OFFICE (CCP1011) | | |
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DSD0002163

**AMERICAN
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LEGAL COURIER & ATTORNEY SERVICE

Phone: 1-866-444-0891

JOB # 121810

2870 4th Avenue, Suite 102
San Diego, CA 92103
Fax: (619) 278-0892

615 Civic Center Dr. W., Suite 215
Santa Ana, CA 92701
Fax: (714) 547-1175

DATE: 11-28-06

DRIVER: 102

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| MESSENGER SERVICE | | | | | <input type="checkbox"/> Delivery | <input type="checkbox"/> Pick up | |
| DELIVERY TIME REQUEST: | | | | | <input checked="" type="checkbox"/> IMMEDIATE | <input type="checkbox"/> RUSH | <input type="checkbox"/> ECONOMY |
| CALLER: <u>Digital</u> | EXT. <u>6211</u> | ATTY. INIT. | FLOOR | ACCOUNT REFERENCE # <u>305673.705</u> | | | |
| FIRM NAME: COOLEY GODWARD KRONISH LLP 4401 Eastgate Mall San Diego, CA 92121 (858) 550-6000 | | | | NAME: <u>Wanda E. Brohan</u> ADDRESS: <u>1222 First Ave. MS 501</u> PHONE: <u>S.D. 92101</u> | | | |
| SERVICE OF PROCESS | | | | | | | |
| | | | | <input type="checkbox"/> Business | <input type="checkbox"/> Residence | | |
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| <input checked="" type="checkbox"/> NO CALL REQUIRED <u>Sam</u> <input type="checkbox"/> SAME DAY RETURN <u>858</u> <u>550 6200</u> | | <input type="checkbox"/> SUPERIOR COURT <input type="checkbox"/> DOWNTOWN <input type="checkbox"/> VISTA <input type="checkbox"/> EL CAJON <input type="checkbox"/> CHULA VISTA <input type="checkbox"/> SANTA ANA | | <input type="checkbox"/> BANKRUPTCY <input type="checkbox"/> DISTRICT <input type="checkbox"/> PROBATE <input type="checkbox"/> FAMILY OTHER | | COURT FEES <input type="checkbox"/> ATTACHED <input type="checkbox"/> PLEASE ADVANCE AMOUNT CHECK | |
| CASE NUMBER | CASE NAME | TYPE OF DOC'S | | | LAST DAY TO FILE | | |
| SPECIAL INSTRUCTIONS: | | X <u>Judy Kinslow</u> PRINT NAME <u>Judy Kinslow</u> | | | | | |
| | | | | | TIME DELIVERED <u>12:16</u> | | |

DSD0002164

Exhibit 28

DEPARTMENT OF TRANSPORTATION
DIVISION OF AERONAUTICS - M.S.#40
1120 N STREET
P. O. BOX 942873
SACRAMENTO, CA 94273-0001
PHONE (916) 654-4959
FAX (916) 653-9531
TTY (916) 651-6827



Flex your power!
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September 29, 2006

Via Overnight Mail and Facsimile to (714) 384-6521

Ms. Barbara E. Lichman
Chevalier, Allen & Lichman, LLP
695 Town Center Drive, Suite 700
Costa Mesa, California 92626-7187

Dear Ms. Lichman:

Thank you for your letter of September 18, 2006, regarding the violation of California Public Utilities Code (PUC) Section 21659 by the construction of the Sunroad Centrum 1 Building near Montgomery Field airport. Unfortunately, your letter does not answer the concerns of the California Department of Transportation (Department), Division of Aeronautics.

The position stated in our letter of September 14, 2006 to Sunroad Enterprises remains the same. The construction of the Sunroad Centrum 1 Building is a violation of PUC Section 21659(a). Without issuance of a permit by the Department, continued construction of any part of the building that exceeds 160 feet above ground level is unlawful. That height, as specified by the Federal Aviation Administration (FAA) in their Notice of Presumed Hazard, dated April 24, 2006, was the maximum height an object in that location could reach without resulting in a Determination of Hazard to Air Navigation (as determined in the FAA Airspace Determination, dated August 11, 2006, for Aeronautical Study No. 2006-AWP-4601-OE for the planned building height of 180 feet).

If construction in violation of PUC Section 21659 proceeds, you are proceeding at your own risk, as you have been notified of the Department's position. Additionally, if an aircraft accident occurs at the site of the Sunroad Centrum 1 Building because of this PUC violation, you are assuming all liability for the accident. Further attempts to obfuscate the issue or cause additional delay with your legal responsibility to comply with Section 21659 of the State Aeronautics Act will result in enforcement action by the Department.

Sincerely,

JEFF R. BROWN
Aviation Safety Officer

- c: Mike Tussey, Airports Director, City of San Diego
San Diego Airports Advisory Committee
David Miller, Attorney, City of San Diego
Tait Galloway, Senior Planner, City of San Diego
Bill Anderson, Director, San Diego Planning & Community Investment Department
San Diego Regional Airport Authority
Tom Storey, Vice President Development, Sunroad Enterprises
Craig Bachmann, Director of Construction, Sunroad Enterprises
FAA, AWP 622

"Caltrans improves mobility across California"

Exhibit 1

DSD0002196

Exhibit 29

DAVID E. MILLER
DEPUTY CITY ATTORNEY

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO
MICHAEL J. AGUIRRE
CITY ATTORNEY

CIVIL DIVISION
1200 THIRD AVENUE, SUITE 1100
SAN DIEGO, CALIFORNIA 92101-4100
TELEPHONE (619) 533-5800
FAX (619) 533-5856

October 19, 2006

VIA HAND DELIVERY

Jim Waring
Deputy Chief Operating Officer
Department of Land Use and Economic Development
City of San Diego

Dear Mr. Waring:

Sunroad Centrum Building 1

As you are aware, on August 11, 2006, the Federal Aviation Administration [FAA], completed an aeronautical study under the provisions of 49 U.S.C., Section 44718 and Title 14 of the Code of Federal Regulations, Part 77, concerning the Sunroad Centrum Building 1 Project [Project]. The aeronautical study revealed that the structure as built would have a "**substantial adverse effect** on the safe and efficient utilization of the navigable airspace by aircraft..." [emphasis added]. In light of this conclusion, the FAA has determined that the Project is a "hazard to air navigation." See *FAA Aeronautical Study No. 2006-AWP-4601-OE*. This determination was subject to review on or before September 10, 2006. No request for review was sought by the Project applicant. Thus, the FAA determination stands.

Under California Government Code section 50485.2, the City has a duty to prevent the creation of any hazard to air navigation using the police powers of the City. California Government Code section 50485.2 reads in relevant part:

It is hereby found that an airport hazard endangers the lives and property of users of the airport and of occupants of land in its vicinity and also, if of the obstruction type, in effect reduces the size of the area available for the landing, taking off and maneuvering of the aircraft, thus tending to destroy or impair the utility of the airport and the public investment therein. Accordingly, it is hereby declared: (a) that the creation or establishment of an airport hazard is a public nuisance and an injury to the community served by the airport in question; and (b) that it **is therefore necessary in the interest of the public health, public safety, and general welfare that the creation or establishment of airport hazards be prevented by**

appropriate exercise of the police power or the authority conferred by Article 2.6 (commencing with Section 21652) of Part 1 of Division 9 of the Public Utilities Code. [Emphasis added].

In addition, San Diego Municipal Code section §121.0302(b)(4) makes it unlawful for any person to maintain or allow the existence of any condition that creates a "public nuisance." The City's Municipal Code defines "public nuisance" as "any condition caused, maintained or permitted to exist which constitutes a threat to the public's health, safety and welfare." SDMC §11.0210. Furthermore, California Government Code section 50485.2 defines "public nuisance" as the "creation or establishment of an airport hazard."

The Project, under both state and local law, fits squarely within the definition of a "public nuisance." As an "airport hazard," the Project is a "public nuisance," and, as a condition constituting a threat to the public health, safety, and welfare, it is also a "public nuisance." Therefore, by maintaining the structure at its current height, the Project applicant is maintaining a "public nuisance" in violation of San Diego Municipal Code section 121.0302(b)(4).

Pursuant to California Government Code Section 38773, the City has the authority to judicially abate public nuisances by filing criminal or civil actions. The City also has the authority to make the expense of abatement of the nuisance a special assessment, or a lien against the property on which it is maintained and a personal obligation against the property owner, in accordance with California Government Code Sections 38773.1 or 38773.5. SDMC §12.0204. The City may also abate any violation of a state code, which constitutes a "public nuisance." SDMC §12.0602.

In addition, to being a "hazard to air navigation" and a "public nuisance," the Project is being constructed without permits required by California law. California Public Utilities Section 21659(a) requires that an applicant obtain a permit from the California Department of Transportation prior to building any structure that would exceed the FAA obstruction standards included in Title 14 of the Code of Federal Regulations, Part 77, Subpart C [Part 77]:

No person shall construct or alter any structure or permit any natural growth to grow at a height which exceeds the obstruction standards set forth in the regulations of the Federal Aviation Administration relating to objects affecting navigable airspace contained in Title 14 of the Code of Federal Regulations, Part 77, Subpart C, unless a permit allowing the construction, alteration, or growth is issued by the department.

At Project location, a structure of 180' would exceed the obstruction standards under Part 77 and, therefore, require a state permit prior to construction. The Project applicant has not sought or obtained the state permit and is continuing construction in violation of state law. This violation is punishable as a criminal offense with a fine of not more than one thousand dollars (\$1,000) or by imprisonment of not more than six months, or both. Public Utilities Code §21019.

Finally, the City's permit revocation proceedings authorize the revocation of the building permit for the Project. Permit revocation is permitted where project approval violates an applicable statute, ordinance, law, or regulation; or when the approval is detrimental to the public health, safety, or welfare; or when the approval constitutes a public nuisance. SDMC §§121.0314(c)(4) and (5). The Project, as approved, violates Federal Regulations, the state Public Utility Code, and the San Diego Municipal Code. Additionally, the approval is detrimental to the public health, safety, and welfare, and constitutes a "public nuisance."

With knowledge of the declaration by the FAA that the building is a "hazard to air navigation," the knowledge that it is a public nuisance under both state and local law, and the knowledge that the building is being constructed in violation of state law, the City must issue a "Stop Work Order" for the Project.

Sincerely yours,

MICHAEL J. AGUIRRE, City Attorney

By


David E. Miller
Deputy City Attorney

DEM:dem

Attachments

cc: Michael J. Aguirre
Karen Heumann
Carmen Brock
Abbe Wolfsheimer
Marcela Escobar-Ecks
Kelly Broughton

Exhibit 30

Government Code § 50485.2.

It is hereby found that an airport hazard endangers the lives and property of users of the airport and of occupants of land in its vicinity and also, if of the obstruction type, in effect reduces the size of the area available for the landing, taking off and maneuvering of the aircraft, thus tending to destroy or impair the utility of the airport and the public investment therein. Accordingly, it is hereby declared:

(a) that the creation or establishment of an airport hazard is a public nuisance and an injury to the community served by the airport in question; and

(b) that it is therefore necessary in the interest of the public health, public safety, and general welfare that the creation or establishment of airport hazards be prevented by appropriate exercise of the police power or the authority conferred by Article 2.6 (commencing with Section 21652) of Part 1 of Division 9 of the Public Utilities Code. It is further declared that both the prevention of the creation or establishment of airport hazards and the elimination, removal, alteration, mitigation, or marking and lighting of existing airport hazards are public purposes for which a city or county may raise and expend public funds and acquire land or property interests therein.